Customs Bulletin

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and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 79-123)

Bonds

Approval and discontinuance of carrier bonds, Customs form 3587.

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: April 19, 1979

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
All American, Inc., Sioux Falls, SD; motor carrier; Western Surety Co. D 4/2/79	Aug. 4, 1975	Aug. 22, 1975	Pembina, ND; $30,000
All Americas Forwarding Co., 2225 N.W. 70th Ave., Miami, FL; freight forwarder; St. Paul Fire & Marine Ins. Co.	Feb. 28, 1979	Apr. 9, 1979	Miami, FL; $50,000
All Southern Trucking, Inc., P.O. Box 2698, Tampa, FL; motor carrier; Fidelity & Deposit Company of MD. (PB 2/1/78) D 1/26/79 [1]	Feb. 1, 1979	Feb. 1, 1979	Tampa, FL; $25,000
Coast Transport, Inc., 4667 Somerton Rd., Trevose, PA; motor carrier; Washington International Ins. Co.	Mar. 20, 1979	Apr. 2, 1979	Philadelphia, PA; $25,000
Luis Ayala Colon, Suers., Inc., 65 Comercio St., Playa-Ponce, PR; motor carrier; Puerto Rican-American Ins. Co.	Dec. 26, 1978	Mar. 26, 1979	San Juan; PR; $25,000

Footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Everett Trucking, Inc., P.O. Box 56, Mount Vernon, WA; motor carrier; General Ins. Co. of America D 4/12/79	Jan. 14, 1972	Jan. 14, 1972	Seattle, WA; $25,000
F. H. Fenderson, Inc., Bangor International Airport, P.O. Box 614, Bangor, ME; motor carrier; Aetna Casualty & Surety Co. (PB 4/13/76) D 4/12/79 [3]	Apr. 13, 1979	Apr. 13, 1979	Portland, ME; $50,000
Frederick Transport Ltd., R.R. No. 6, Chatham, Ontario, Canada N7M 5J6; motor carrier; Lawyers Surety Corp. (PB 4/23/75) D 3/13/79 [3]	Mar. 13, 1979	Mar. 13, 1979	Detroit, MI; $50,000
Gulf Central Warehouse Center, Inc., 5605 South Westshore Blvd., Tampa, FL; motor carrier; Safeco Ins. Co. of America	Mar. 23, 1979	Mar. 30, 1979	Tampa, FL; $25,000
Indiana Harbor Belt Railroad Co., 2721 161st St., Hammond, IN; rail carrier; National Union Fire Ins. Co. of Pittsburgh, PA (PB 9/1/76) D 3/22/79 [4]	Feb. 13, 1979	Mar. 22, 1979	New York Seaport; $100,000
Indiana Transit Service, Inc., 4300 W. Morris St., Indianapolis, IN; motor carrier; Fidelity and Deposit Co. of Maryland	Mar. 27, 1979	Apr. 4, 1979	Chicago, IL; $25,000
Kale Equipment Rental Co., Inc., Mount Laurel, NJ; motor carrier; United States Fidelity and Guaranty Co.	Aug. 7, 1978	Mar. 19, 1979	Philadelphia, PA; $50,000
Pete Kooyman d/b/a Pete Kooyman Trucking, P.O. Box 1330, Stockton, CA; motor carrier; Northwestern National Ins. Co. of Milwaukee D 3/16/79	Nov. 15, 1976	Jan. 26, 1977	Los Angeles, CA; $50,000
L & H Produce Limited, 888 Malkin Ave., Vancouver, BC, Canada; motor carrier; Peerless Ins. Co. D 3/30/79	Jan. 10, 1972	Mar. 6, 1972	Seattle, WA; $25,000
Lyon Moving & Storage Co., 3416 S. La Cienega Blvd., Los Angeles, CA; motor carrier; Transamerica Ins. Co.	Dec. 14, 1978	Mar. 16, 1979	Los Angeles, CA; $50,000
Magnolia Transportation Co., Inc., P.O. Box 24177, Houston, TX; motor carrier; Washington International Ins. Co.	Mar. 26, 1979	Apr. 11, 1979	Houston, TX; $50,000
Mirman Transportation, Inc., 86 Jack London Square, Oakland, CA; motor carrier; Washington International Ins. Co.	Mar. 15, 1979	Mar. 20, 1979	San Francisco, CA; $25,000
National Transit Corp., 4401 Stecker Ave., Dearborn, MI; motor carrier; Buckeye Union Ins. Co. D 3/19/79	Mar. 10, 1977	Aug. 10, 1977	Detroit, MI; $50,000
Sammons Trucking, P.O. Box 4347, Missoula, MT; motor carrier; Peerless Ins. Co.	Mar. 2, 1979	Mar. 26, 1979	Great Falls, MT; $25,000

Footnotes at end of table.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Silverwheel Freightlines, Inc., 1321 SE Water Ave., Portland, OR; motor carrier; Peerless Ins. Co. (PB 3/3/77) D 4/5/79 [5]	Mar. 28, 1979	Apr. 5, 1979	Portland, OR; $25,000
Sun Transportation, Inc., 40 Pullman St., Worcester, MA; motor carrier; Investors Ins. Co. of America	Oct. 23, 1978	Apr. 4, 1979	Boston, MA; $25,000
Werner Continental, Inc., 2500 W. County Rd. C., Roseville, MN; motor carrier; St. Paul Fire & Marine Ins. Co. D 3/21/79	May 8, 1968	May 14, 1968	Minneapolis, MN; $30,000
Western Carriers, Inc., 620 So. Dawson, Seattle, WA; motor carrier; Fireman's Fund Ins. Co.	Feb. 20, 1979	Mar. 22, 1979	Seattle, WA; $25,000

[1] Surety is American Manufacturer's Mutual;
[2] Surety is Peerless Ins. Co.
[3] Surety is Great American Ins. Co.
[4] Surety is Insurance Co. of North America;
[5] Surety is Transport Indemnity Co.

BON-3-03

DONALD W. LEWIS,
(For Leonard Lehman, Assistant
Commissioner, Regulations and Rulings).

(T.D. 79-124)

Tuna Fish—Tariff-Rate Quota

The tariff-rate quota for the calendar year 1979, on tuna classifiable under item 112.30, Tariff Schedules of the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for calendar year 1979.

SUMMARY: Each year the tariff-rate quota for tuna fish described in item 112.30, Tariff Schedules of the United States (TSUS), is based on the U.S. pack of canned tuna during the preceding calendar year.

EFFECTIVE DATES: The 1979 tariff-rate quota is applicable to tuna fish described in item 112.30, TSUS, entered, or withdrawn from warehouse, for consumption during the period January 1 through December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Helen C. Rohrbaugh, Head, Quota Section, Duty Assessment Division, Office of Operations, U.S. Customs Service, Washington, D.C. 20229; 202–566–8592.

It has now been determined that 125,813,220 pounds of tuna may be entered for consumption or withdrawn from warehouse for consumption during the calendar year 1979 at the rate of 6 per centum ad valorem under item 112.30, TSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 per centum ad valorem under item 112.34 of the tariff schedules.

Pursuant to the provisions of item 112.30, TSUS, the above quota is based on the U.S. pack of canned tuna during the calendar year 1978.

(QUO–2–0:D:S:Q GH)

Dated: April 20, 1979.

ROBERT E. CHASEN,
Commissioner of Customs.

(T.D. 79–125)

Synopses of Drawback Decisions

The following are synopses of drawback rates and amendments issued October 2, 1978, to March 14, 1979, inclusive, pursuant to section 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(a), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner who issued the rate, and the date on which it was issued.

(DRA–1–09)

Dated: April 19, 1979.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(A) Company: American Microsystems, Inc.
Articles: Finished semiconductor devices.
Merchandise: Imported semiconductor subassemblies.

Factories: Santa Clara, Calif.; Pocatello, Idaho.
Statement signed: November 8, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: San Francisco December 21, 1978.

(B) Company: Barton Brands, Ltd.
Articles: Distilled spirits less than 100 proof.
Merchandise: Imported 100-proof distilled spirits.
Factory: Bardstown, Ky.
Statement signed: September 22, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, October 4, 1978.

(C) Company: Brainard-Kilman Drill Co.
Articles: Rotary drill rig.
Merchandise: Imported and/or drawback Deutz diesel engine.
Factory: Tucker, Ga.
Statement signed: September 27, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Miami, October 10, 1978.

(D) Company: Consolidated Systems, Inc.
Articles: Steel roof deck, composite steel deck, consoliform (slabform), and steel drywall systems.
Merchandise: Imported and/or drawback light gage steel sheet in coils, galvanized and cold rolled.
Factory: Columbia, S.C.
Statement signed: August 31, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Miami, October 6, 1978.

(E) Company: Cooper Industries, Inc.
Articles: Steel files.
Merchandise: Imported file steel.
Factory: Cullman, Ala.
Statement signed: September 19, 1978.
Basis of claim: Used in, less valuable waste.
Amendment issued by Regional Commissioner of Customs: Baltimore, November 7, 1978.
Amends: T.D. 53311–A, as amended, to cover change in location of factory from Philadelphia, Pa.

(F) Company: DTS Caribe.
Articles: Cash registers.
Merchandise: Imported printers.
Factory: Vega Baja, P.R.
Statement signed: September 27, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, October 17, 1978.

(G) Company: Data Terminal Systems Inc.
Articles: Cash registers.
Merchandise: Imported printers.
Factory: Maynard, Mass.
Statement signed: September 27, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, October 17, 1978.

(H) Company: De Zurik, a unit of General Signal Manufacturing Corp.
Articles: V-port ball segmented control valve, complete with actuator.
Merchandise: Imported V-port ball segmented control valve.
Factory: McMinnville, Tenn.
Statement signed: October 6, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, October 25, 1978.

(I) Company: Digital Equipment Corp.
Articles: Complete computer systems and options.
Merchandise: Imported back panels and memory boards.
Factories: Various factories as set forth in manufacturer's statement.
Statement signed: October 20, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Boston, November 21, 1978.

(J) Company: Fox-Cross Candy Co.
Articles: Candy bar (Charleston Chew).
Merchandise: Imported sugar and palm kernel oil.
Factory: Everett, Mass.
Statement signed: November 13, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Boston, November 20, 1978.

(K) Company: Grove Manufacturing Co., Division of Walter Kidde and Co., Inc.
Articles: Hydraulic cranes (truck mounted, rough terrain, and industrial).
Merchandise: Imported Cummins engines (models V378, V504, and V555).
Factories: Shady Grove, Pa.; Conway, S.C.
Statement signed: November 9, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, November 29, 1978.

(L) Company: Hail & Cotton, Inc.
Articles: Black fat tobacco.
Merchandise: Imported unmanufactured fire cured and dark air cured cigarette and chewing tobacco.
Factory: Springfield, Tenn.
Statement signed: September 28, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, November 7, 1978.

(M) Company: Charles Jacquin et Cie, Inc.
Articles: Bottled distilled spirits—Coventry and Devonshire Scotch, Canadian Majesty, Five Star Brandy, Le Joy Cassis, Barone Amaretto, Napoleon French Brandy, Jacquin's Sambuca.
Merchandise: Imported distilled bulk spirits—Scotch and Canadian Whiskey, French and Spanish Brandy, Sambuca, Cassis, Amaretto, and flavoring extracts.
Factory: Philadelphia, Pa.
Statement signed: November 22, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Baltimore, December 6, 1978.

(N) Company: Lorber Industries International.
Articles: Printed transfer paper for textiles.
Merchandise: Imported unprinted heat transfer paper.
Factory: Gardena, Calif.
Statement signed: August 25, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Los Angeles, November 15, 1978.

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(O) Company: Monsanto Co.
Articles: Rifflex (Avadex BW/Metoxuron granular herbicide)—also called Herbicide San 250, Avadex BW/Dosanex.
Merchandise: Imported Dosanex technical powder (3-(3-chloro-4-methoxy-phenol) 1,1-dimethyl urea)—also called Metoxuron technical.
Factory: Muscatine, Iowa.
Statement signed: September 7, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, October 2, 1978.

(P) Company: NCR Corp.
Articles: Commercial teller terminals.
Merchandise: Imported printers and keyboards.
Factory: Dayton, Ohio.
Statement signed: December 6, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, December 14, 1978.

(Q) Company: NCR Corp.
Articles: Self service financial terminals.
Merchandise: Imported cash dipensers model 1110, magnetic card reader/writers, and harnesses.
Factory: Dayton, Ohio.
Statement signed: November 15, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Chicago, December 7, 1978.

(R) Company: Nashua Corp.
Articles: Carbonless paper.
Merchandise: Imported BB 138, CVL, DEBN (Red), ATP (Green), and BLMB dyes.
Factories: Merrimack and Nashua, N.H. (Latter not previously published).
Statement signed: September 27, 1977.
Basis of claim: Used in.
Amendment issued by Regional Commissioner of Customs: Boston, November 29, 1978.
Amends: T.D. 78–301–R, to cover BLMB dyes and a change in the basis of claim.

(S) Company: Nashua Corp.
Articles: Thermaprint paper.
Merchandise: Drawback ETAC dye.
Factories: Merrimack and Nashua, N.H.
Statement signed: August 8, 1977.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Boston, November 16, 1978.

(T) Company: PCA International, Inc.
Articles: Photographic color portrait prints.
Merchandise: Imported and/or drawback color photographic paper.
Factory: Matthews, N.C.
Statement signed: October 24, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: Miami, November 16, 1978.

(U) Company: Pacific Seating Co.
Articles: Upholstered chairs.
Merchandise: Imported upholstery cloth or fabric.
Factory: San Leandro, Calif.
Statement signed: November 13, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, December 22, 1978.

(V) Company: Rockland Industries, Inc.
Articles: Bleached and finished, or bleached, dyed, and finished cotton piece goods; and mercerized, bleached, and/or dyed cotton piece goods.
Merchandise: Imported cotton piece goods in the greige.
Factories: Brooklandville, Md.; Bamberg, S.C.
Statement signed: November 14, 1978.
Basis of claim: Used in, less valuable waste.
Amendment issued by Regional Commissioner of Customs: Baltimore, November 29, 1978.
Amends: T.D. 51847–F, as amended; and T.D. 55827(2), as amended, to cover additional factory at Bamberg, S.C.

(W) Company: Schenley Distillers, Inc.
Articles: Tequila.
Merchandise: Imported tequila.
Factory: Fresno, Calif.

Statement signed: August 29, 1978.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs: San Francisco, October 16, 1978.

(X) Company: Timberland Panel.
Articles: Finished plywood panels.
Merchandise: Imported lauan plywood panels.
Factory: Longview, Wash.
Statement signed: November 17, 1978.
Basis of claim: Used in.
Amendment issued by Regional Commissioner of Customs: San Francisco, December 1, 1978.
Amends: T.D. 71–135–M, to cover successorship from Welsh Corp.

(Y) Company: Vulcan Trailer Manufacturing Co.
Articles: Heavy-duty trailers.
Merchandise: Imported steel belted radial tires and forged steel kingpins.
Factory: Birmingham, Ala.
Statement signed: October 11, 1978.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: New Orleans, October 16, 1978.

(Z) Company: W. A. Whitney Corp.
Articles: Panelmaster and Platemaster machines, numerically controlled.
Merchandise: Imported plasma torch units.
Factory: Rockford, Ill.
Statement signed: February 20, 1979.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs: Chicago, March 14, 1979.

T.D. 79–126

Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange based on rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

People's Republic of China yuan:	
April 9, 1979	$0.633874
April 10, 1979 through April 13, 1979	.631313
Hong Kong dollar:	
April 9, 1979	$0.196773
April 10, 1979	.196618
April 11, 1979	.194761
April 12, 1979	.193050
April 13, 1979	.192771
Iran rial:	
April 9, 1979 through April 12, 1979	$0.0133
April 13, 1979	.013350
Philippines peso:	
April 9, 1979 through April 13, 1979	$0.1365
Singapore dollar:	
April 9, 1979	$0.453309
April 10, 1979	.454442
April 11, 1979	.454545
April 12, 1979	.454030
April 13, 1979	.453926
Thailand baht (tical):	
April 9, 1979 through April 12, 1979	$0.0505
April 13, 1979	.0488

(LIQ-3-O:D:E)

Date: April 20, 1979.

BEN L. IRVIN,
Acting Director,
Duty Assessment Division.

Customs Service Decisions

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: April 18, 1979.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

(C.S.D. 79–137)

Classification: Nitrocellulose Packed in Isopropyl Alcohol

Date: March 22, 1978
File: CLA–2:R:CV:MC
059129 H

Your letter of January 19, 1978, concerns the tariff classification of nitrocellulose packed in isopropyl alcohol. Nitrocellulose is said to be very unstable and, as a result, is packed in isopropyl alcohol. The alcohol is there for packing purposes only. It is said to be packed 70 percent dry nitrocellulose and 30 percent isopropyl alcohol.

It is not believed that merchandise of this type can be classified a mixture within the meaning of headnote 3(a), Schedule 4, Tariff Schedules of the United States (TSUS). In *Aetna Explosives* v. *United States*, 9 CCA 298, the court considered the classification of nitric acid which was shipped in about 20 percent sulphuric acid to protect the iron tank cars which carried the nitric acid. The court concluded that the introduction of the minimum but essential quantity of sulphuric acid for the purpose indicated was more analogous to the act of packing for shipment than an attempt to prepare a mixture designed for use.

Further, in view of the provisions relating to commingled merchandise in general headnote 7, TSUS, this merchandise would not be dutiable at a single rate. Rather, 70 percent of the shipment, repre-

senting nitrocellulose, would be dutiable in item 445.25, TSUS, at 9.7 cents per pound, while the isopropyl alcohol, representing the remaining 30 percent, would be classifiable in item 428.06, TSUS, dutiable at 1.5 cents per pound.

(C.S.D. 79–138)

Classification: Laparotomy Sponges

Date: March 27, 1978
File: CLA–2:R:CV:MC
059165 MG

In your letter of January 31, 1978, you request a binding classification ruling for laparotomy sponges containing strands of yarn impregnated with barium sulfate. Two sample sponges were submitted. The sponges are products of Taiwan.

Each sample consists of a single piece of plain, loosely woven white fabric with two fast edges, folded twice to form a four-layered rectangle measuring approximately 12 inches by 14 inches. The folded fabric is stitched along all four sides, through the center lengthwise, and through the center widthwise. Each sponge has a 6-inch loop handle made of a coarsely woven white fabric. Two blue strands of yarn, which we understand are impregnated with X-ray detectable barium sulfate, are woven across the fabric about 5 inches apart.

Merchandise, as described above and as represented by the submitted samples, if in chief value of cotton, is classifiable under the provision for articles not specially provided for, of textile materials, not ornamented, of cotton, other, in item 386.50, Tariff Schedules of the United States (TSUS), and is dutiable at the rate of 14 percent ad valorem.

The merchandise is not classifiable under the provision for gauze impregnated with medicinals in item 495.05, TSUS, for the reason that the barium sulfate contained in the sponge has neither healing nor curative properties, but is used as an indicator in X-ray photography medicine. Please refer to our letter to you of January 12, 1978, file No. 053912, for an elaboration on this point.

The merchandise described above may be subject to international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–139)

Classification: Paratex 2229, a Petroleum Naphtha

Date: May 8, 1978
File: CLA–2:R:CV:MC
059045 LR

This is in reply to your letters of December 9, 1977, and March 30, 1978, concerning the tariff status of a product from Canada, Paratex 2229, which you state will be used in the manufacture of paint and protective coatings.

An analysis of the submitted sample by a Customs laboratory indicates that Paratex 2229 is a petroleum naphtha containing about 90 percent saturated hydrocarbons (48 percent paraffins and 42 percent naphthenes) and about 10 percent aromatic hydrocarbons (benzene, toluene, mixed xylenes, and about 1.5 percent alkylbenzenes).

In view of the small amount of dutiable benzenoid components contained in this product (1.5 percent alkylbenzenes) it is classifiable under the provision for naphthas derived from petroleum in item 475.35, Tariff Schedules of the United States, with duty at the rate of 0.25 cent per gallon.

(C.S.D. 79–140)

Classification: Wooden Garment Rack

Date: May 25, 1978
File: CLA-2:R:CV:MC
054672 EA

DISTRICT DIRECTOR OF CUSTOMS,
555 Battery Street,
San Francisco, Calif.

DEAR SIR: Customs form 6431, dated January 7, 1977, relates to a difference of opinion concerning the tariff classification of a garment rack, made in Hong Kong and imported at the port of San Franciso on entry No. 112366 dated November 24, 1976 by (name). This is the seventh item on page 2 of the list of differences in classification reported to Headquarters in CIE N–30/78 dated March 1, 1978.

An illustration and description of the merchandise has been submitted. The article consists of a rectangular frame, presumably wholly or in chief value of wood other than mahogany, that is 5 inches high and 24 inches long. The frame, designed for mounting to a wall, contains six folding hooks for hanging garments, etc.

The issue around which the difference arose concerns the provision for "coat and garment hanger," in item 206.96, Tariff Schedules of the United States (TSUS), which originated as a special breakout from the provision for household utensils of wood, as part of the implementation program for the generalized system of preferences (GSP), effective January 1, 1976. New York is of the opinion that the merchandise, since chiefly used for hanging garments, is classifiable as a coat and garment hanger in item 206.96 (TSUS), while San Franciso is of the opinion that the merchandise is more properly designated as a "rack" and is classifiable in the basket provision for household utensils of wood in item 206.98, TSUS. Although merchandise classifiable under either item is dutiable at the rate of 8 percent and valorem, merchandise classifiable under item 206.98, TSUS, is entitled to the benefits of GSP if imported from Hong Kong and if otherwise qualified.

Both San Francisco and New York are in agreement that the article is classifiable under the provision in schedule 2, TSUS, for household utensils of wood, as opposed to any of the furniture provisions in schedule 7, TSUS. This office concurs in that determination noting *Amthor Imports, Inc.* v. *United States*, 68 Cust. Ct. 24, C.D. 4328 (1972).

In the interpretation of tariff laws, words are to be taken in their commonly received and popular sense in the absence of a contrary legislative intent or proof of a commercial designation, if that differs from the ordinary understanding of the term. *Trans-Atlantic Company* v. *United States*, 60 CCPA 100, C.A.D. 1088 (1973). An examination of retail catalogs for major department stores and mail order houses (Sears 1978 Spring/Summer; Sears 1977 Fall/Winter; J. C. Penny Fall/Winter 1977; Spiegel Spring/Summer 1978) indicates that garment hangers are consistently depicted as portable, shoulder shaped articles around which garments can be draped, containing a hook at the top so as to be hung on a horizontal bar, etc. Articles more closely resembling the subject merchandise, that are mounted on doors and walls and contain hooks for the hanging of hats, shoes, garments, etc., are described as "racks," with equal consistency.

"The Random House Dictionary", College Edition (1973), defines hanger as "a shoulder-shaped frame with a hook at the top, usually of wire, wood, or plastic, for draping and hanging an article of clothing when not in use." "Webster's New Collegiate Dictionary" (1977) defines hanger as a "device that fits inside or around a garment for hanging from a hook or rod." Hanger is defined in the "American Heritage Dictionary of the English Language" (1976), as "a device around which a garment is draped for hanging from a hook or rod." None of the other definitions of hanger, applicable to the subject merchandise, are specific to garments or coats.

291-886—79——3

On the basis of the above, it appears that the term "coat and garment hanger," with regard to both trade and popular meaning, refers to shoulder shaped portable articles hung on rods and hooks. Although the subject racks are chiefly used for the hanging of garments, use is not a criterion in determining whether merchandise is classifiable under an eo nomine designation, where the provision is clear and unambiguous, without any suggestion that the element of use should influence the classification of merchandise thereunder. *F. W. Myers & Co., Inc.* v. *United States*, 24 Cust. Ct. 178, C.D. 1228 (1950); *Gold-Silver & Co.* v. *United States*, 36 Cust. Ct. 51, C.D. 1753 (1956).

Accordingly, the subject wall rack is classifiable under the provision for Household utensils * * * of wood: Other: Other, in item 206.98, TSUS, and, if otherwise qualified, is entitled to the benefits of GSP.

(C.S.D. 79–141)

Classification: First Day Cover Canceled by Rubber Stamp

Date: May 30, 1978
File: CLA–2:R:CV:MC
053147 EA

DISTRICT DIRECTOR OF CUSTOMS,
P.O. Box 9516,
El Paso, Tex.

DEAR SIR: This is in further response to a difference of opinion reported to headquarters on Customs form 6431 dated June 24, 1976, concerning the tariff classification of Apollo Soyuz First Day Covers imported at the port of Denver on entry No. 101446 dated September 3, 1975, by (importer). Our original reply is contained in letter ruling 053147 dated February 2, 1978.

This reply to an oral inquiry is limited to the issue of whether a First Day Cover, containing lithographically printed stamps and a lithographically printed cachet, but containing a postal cancellation made by a rubber stamp or other nonlithographic process, may be classifiable under the provision for lithographs on paper in item 274.60 or 274.65, Tariff Schedules of the United States (TSUS).

All prior rulings that we have located indicate that the classification of First Day Covers containing more than an official government imprint is under the provision for other pictorial matter in item 274.70, TSUS. Letter ruling AP 483.61 B, dated June 19, 1969, raises the possibility of classification in item 274.60 or 274.65, TSUS, if the printing is done by a lithographic process, but the subject merchandise

in that ruling was "First Day Cover" envelopes, containing no stamps or postal cancellations in their condition as imported. In a reply to an internal advice request, dated May 6, 1975, further clarified December 4, 1975 (letter ruling 039349), it is stated that all First Day Covers in which the cachet is not produced at the instance and expense of a foreign government are classifiable in item 274.70, TSUS. There is no evidence before us that establishes a practice to the contrary.

Because of the postal cancellation, the articles consist of more than lithographic print, and the term "lithographs on paper" does not fit the description of "in chief value of" or "articles containing" in General Headnote 9(f), TSUS. Further, since the classification of the article as an entirety is dependent upon its status as a First Day Cover, and the dated postal cancellation is a primary requirement of such status, the cancellation cannot be regarded as negligible or insignificant for purposes of the de minimis rule.

Accordingly, on consideration of this matter again, we adhere to the position stated in letter ruling 053147, classifying such merchandise under the provision for other pictorial matter, in item 274.70, TSUS.

(C.S.D. 79–142)

Classification: Cushion Pads Used in Hot Press Laminating

Date: June 7, 1978
File: CLA–2:R:CV:MC
059085 EA

In your letter of January 9, 1978, you requested the tariff classification of top board cushion pads used in hot press laminating from Japan. Two samples were submitted. The sample designated style SCG–67 is a pad approximately 0.25 inch in thickness, consisting of 15 layers of materials laminated together by synthetic resin. The center layer consists of woven glass fabric and the remaining seven layers outward in both directions are respectively silicon rubber, woven glass fabric, silicon rubber, woven cotton fabric, synthetic rubber, woven glass fabric and polyester fabric. The sample designated KNG–53P2 is a pad approximately 0.2 inch in thickness, consisting of nine layers of material laminated together with a synthetic resin. The center layer consists of a woven glass fabric and the remaining four layers outward in both directions are respectively silicon rubber, woven rayon fabric, nonwoven polyurethane fabric, and plastic.

It is assumed for the purpose of this letter that in its condition as imported, the merchandise is cut to a specific size and shape to be used in a specific laminating press rather than imported in material lengths.

As no information has been provided with regard to the relative values of the component materials, it is further assumed, because of the predominance of manmade fiber, that this is the component of chief value for both samples.

Accordingly, the samples are classifiable under the provision for clothing for papermaking, printing, or other machines, in the piece or as units, not specially provided for, of textile materials; of manmade fibers, in item 358.50, Tariff Schedules of the United States (TSUS), dutiable at the rate of 12 cents per pound plus 15 percent ad valorem.

You suggest that style SCG–67 be classified under the above provision for clothing for * * * machines * * * of textile materials, but as "Other" in item 358.60, TSUS. However, the only materials contained in the pads that are not otherwise provided for by a specific item are the rubber components. Since the subject merchandise is a laminated article, under headnote 4(b), schedule 3, TSUS (copy enclosed), the nontextile substance (rubber) is disregarded in determining the component material of chief value. Accordingly, classification in item 358.60, TSUS, is not appropriate.

(C.S.D. 79–143)

Classification: Wooden Coaster Sets; Entireties

Date: June 15, 1978
File: CLA–2:R:CV:MC
059212 L

In your letter of February 9, 1978, you asked for information about two sets of coasters, your Nos. 4241 and 4242. A sample of each was submitted. We assume that these are products of Taiwan because one sample has a label on the bottom that reads "Made in Taiwan, Republic of China."

Sample item No. 4241 is a wooden Chinese chest coaster set with eight coasters. It consists of a chest measuring about $3\frac{15}{16}$ inches high, $4\frac{1}{2}$ inches wide, and $3\frac{3}{4}$ inches deep. The coasters have a small metal knob on the forward edge, and a round cork inset on the top surface. The chest is decorated with metal corners, and a metal carrying ring on top. The coasters fit into an opening in the front of the chest.

Sample item No. 4242 is a wooden decorated coaster set with eight coasters. This also is in the form of a chest which measures about $3\frac{3}{4}$ inches high, 5 inches wide, and 4 inches deep. Each coaster has a small wooden knob on the forward edge, and a round cork inset on the top surface. The coasters stack into an opening in the front of the chest. The top of the chest has a carrying ring and metal decoration.

These chests with coasters constitute an entirety; they are of a class or kind used chiefly in the home. Classification is as other household utensils, of wood, in item 206.98, Tariff Schedules of the United States (TSUS), and dutiable at the rate of 8 percent ad valorem. Products of the Republic of China covered by item 206.98, TSUS, at this time are not entitled to entry free of Customs duty under the generalized system of preferences.

(C.S.D. 79-144)

Classification: Child's Snowsuit; Coating or Filling With Rubber or Plastics

Date: June 15, 1978
File: CLA-2:R:CV:MC
051866 PR

DISTRICT DIRECTOR OF CUSTOMS,
Ogdensburg, N.Y.

DEAR SIR: Customs form 6431, dated July 22, 1976, relates to a difference of opinion concerning the tariff classification of snowsuits manufactured in Canada and imported at the port of Champlain on entry No. 76-236743, dated July 6, 1976, by (importer). This is the first item on page 2 of the list of differences in classification reported to headquarters in CIE N-30/78, dated March 1, 1978. The only issue presented for determination is whether the fabric forming the outer shell of the subject snowsuits is coated or filled with rubber or plastics for tariff purposes.

Headnote 2, part 4C, schedule 3, Tariff Schedules of the United States (TSUS), provides that the term "coated or filled" as used with reference to textile fabrics and other textile articles means that a substance has been applied to the surface of a fabric so as to visibly and significantly affect the surface or surfaces thereof otherwise than by a change in color, whether or not the color has been changed. It is the position of the Customs Service that in order for a coating to visibly affect the surface of a fabric, that coating must, in fact, be visible.

Three swatches of fabric and a snowsuit were submitted. The swatches of fabric are different colors—green, orange, and brown. Each swatch is a plain woven fabric which we assume is made of man-made fibers. The outer shell material of the sample snowsuit is made of fabric which appears to be the same in color and appearance as the brown swatch. The orange colored swatch of fabric appears to

have been coated or filled on one surface with a nontransparent rubber or plastics material. The nontransparent material partially obscures the weave pattern and most of the fibers comprising the yarns in that fabric. Accordingly, that fabric is coated or filled for tariff purposes.

The two remaining swatches, the green and the brown, show no visible evidence to the naked eye on their exterior surfaces of having been coated or filled with a rubber or plastics material. Even low magnification of these swatches fails to reveal the presence of a coating or filling. The fact that the rubber or plastics material applied to these latter swatches may be transparent in color, is not a factor to be considered. Admittedly, it is more difficult for a transparent plastics or rubber material to visibly affect the surface of a fabric than for a nontransparent plastics or rubber material. The presence of a color in a rubber or plastics application to a fabric obviously makes that application more readily visible. Since the added material, if there is any, cannot be seen on either of the green and brown swatches, they are not coated or filled for tariff purposes.

The sample snowsuit is made from a fabric which is not considered coated or filled for tariff purposes, and is not, therefore, classifiable under a provision which requires that it be wholly or almost wholly of a fabric which is coated or filled with rubber or plastics.

The sending port compares the classification of the instant merchandise with the classification of similar merchandise made from fabrics that are coated or filled with a silver colored plastics or rubber coating. Such merchandise was the subject of our letter of March 12, 1975, file 036319, copy attached, in which it was determined that the Customs Service had an established and uniform practice to classify that merchandise as coated or filled without regard to whether the silver colored coating satisfied the visibility requirement of headnote 2(a). In that ruling the following statement was made:

> A distinction between the fabrics or garments based on color is, admittedly, not desirable; however, we prefer to maintain such a distinction rather than to extend what we believe to be a questionable practice of classification to merchandise not expressedly covered by that practice.

Based on the above, it should be obvious that the ruling on silver colored coated fabrics was not intended and would not be extended to fabrics which have been treated with rubber or plastics material that was not colored silver.

The submitted sample, which is a child's hooded one piece snowsuit with a self belt and a zipper that extends from the neck opening down to the bottom of the left leg opening and which is considered orna-

mented for tariff purposes because of two overlaid woven fabric strips of contrasting colors on each of the arms is classifiable under the provision for other infants' wearing apparel, ornamented, of manmade fibers, in item 382.04, TSUS, with duty at the rate of 25 cents per pound plus 32.5 percent ad valorem.

Snowsuits made with an outer shell fabric similar to the orange colored swatch would probably be classifiable under the provision for other garments designed for rainwear, hunting, fishing, or similar uses, wholly or almost wholly of fabrics which are coated or filled, or laminated, with rubber or plastics, in item 376.56, TSUS, with duty at the rate of 16.5 percent ad valorem.

(C.S.D. 79–145)

Classification: Sisal Placemats With Trim; Ornamentation

Date: June 15, 1978
File: CLA–2:R:CV:MC
054617 EA

In your letter of December 5, 1977, you request the tariff classification of placemats. Samples have been submitted. The placemats are oval shaped and composed of sisal fiber twisted into cord. The cords are woven into a mat with two additional lengths of 3-ply braided cord interwoven throughout the article. One of the braided cords extends beyond the body of the placemat in a scalloped pattern to produce a decorative edge.

Headnote 3(a)(iii), schedule 3, Tariff Schedules of the United States (TSUS), provides in pertinent part, that the term "ornamented" means articles of textile material which are ornamented with edging. Accordingly, nonfunctional edging, or edging, the functional purpose of which is merely incidental to its principal purpose of adorning, embellishing, decorating, or enhancing the appearance of the textile article to which affixed, constitutes ornamentation for tariff classification purposes.

It is your position that the edging does not constitute ornamentation for the following reasons:

(1) The edging is functional in that it keeps the placemat from raveling and losing its shape.

(2) The edging is merely a continuation of the braided sisal cord which functions as part of the basic construction of the article.

In support of your position, you rely on the authority of *Blairmoor Knitwear Corp.* v. *United States*, 60 Cust. Ct. 388, C.D. 3396 (1968); and T.D. 56353(58); T.D. 56168(43); T.D. 56535(79); T.D. 56166(84); and T.D. 56190(196).

In *Blairmoor*, supra, the court concluded that the edging was necessary to join the inner and outer portions of a garment and in all of the cited treasury decisions, the Customs Service determined that the edging was necessary to secure raw or unfinished edges. In the instant situation, an examination of the sample indicates that the scalloped trim is not necessary to secure the outer border of the mat. Only a small knot at a single point along the border is necessary to finish the mat and prevent raveling, and the extension of the braid does not obviate the eventual need for such a finishing knot. Under these circumstances, the Customs Service is unable to conclude that the scalloped trim functions to prevent raveling. If the trim serves to strengthen the finish and preserve the shape at all, a comparison of two sample placemats, one with and one without the trim, indicates that such effect is insubstantial. Accordingly, the trim appears to be primarily decorative.

Although the trim is an extension of the braid that functions as part of the basic construction of the mat, this does not by itself prevent such trim from constituting ornamentation. In *Inter-Maritime Forwarding Co., Inc.* v. *United States*, 69 Cust. Ct. 138, C.D. 4384 (1972), the court determined that loose ends of warp threads, left at each end of a scarf so as to form a fringe, constituted ornamentation. Further, headnote 3(b)(iii), schedule 3, TSUS, provides that edging shall not be required to have a separate existence from the fabric or other article on which it appears in order to constitute ornamentation.

Accordingly the merchandise is classifiable under the provision for other furnishings, ornamented, of vegetable fibers, except cotton, other in item 365.84, TSUS.

(C.S.D. 79-146)

Classification: Wool Coats With Leather Piping, Nonexpandable Box Pleats, and Belt Loop Overlays; Ornamentation

Date: June 27, 1978
File: CLA-2:R:CV:MC
051610 EA

This is in response to your letter of April 6, 1977, requesting the tariff classification of wool coats which you contemplate importing from Uruguay. Three samples have been submitted.

Sample 1, designated style "Galveston," is a man's wool coat with a three-button front opening, lapels, long sleeves and slash pockets. Most of the seams on the coat are covered by leather piping less than one-quarter inch in width. An overlaid piece of fabric, covering some of the roughly finished edges of back sections is placed in such a location as to simulate a belt piece.

Sample 2, designated style "Brighton" is a man's double breasted wool coat consisting of two rows each of three buttons and containing a lapel collar, long sleeves and a leather belt. Leather piping covers most of the seams. There is a textile loop sewn inside the back of the collar and a leather strip approximately 3½ inches long, sewn across the outer back of the jacket, located 2½ inches beneath the collar. The upper back area of the coat contains an inverted box pleat stitched in such a manner as to be nonexpandable. An overlaid piece of fabric is so placed on the back of the coat as to be horizontally alined with two leather belt loops, one on either side of the coat. The overlay piece contains two vertical slits, approximately 2½ inches apart, constituting a third belt loop.

Sample 3, designated style "Chelsea," is a ladies full length wrap around coat, with long sleeves, shawl collar, and two slash pockets. There is a brown leather tie belt and four leather belt loops. Leather piping, less than one-quarter inch wide, covers most of the seams. Additional leather material is used to trim the pockets and form loops that attach to buttons to secure the pockets. Below the waist, the middle back seam opens into a vent. At the waist, the seam and vent are overlaid with a piece of oval shaped wool fabric containing two vertical slits approximately 1⅞ inches apart, which constitute an additional loop through which the belt is channeled.

Headnote 3(a), schedule 3, Tariff Schedules of the United States (TSUS), provides in pertinent part, that the term "ornamented" refers to articles of textile material which are ornamented with textile fabric, applique, tucking, etc. Accordingly, nonfunctional textile fabric, tucking, applique, etc. or applique, tucking, and textile fabric the functional purpose of which is merely incidental to its principal function of adorning, embellishing, decorating, or enhancing the appearance of the textile article to which affixed, constitute ornamentation for tariff classification purposes.

Leather piping would not constitute ornamentation as it is neither a textile material, nor an applique and is in any event functional with regard to the subject merchandise since it strengthens the seams. The simulated belt on style "Galveston," although covering the roughly finished edges of back section would not be considered pri-

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marily functional since the coat is finished without it. However, since the overlay simulates a functional feature that is normally present on a garment such as this one, the overlay does not constitute ornamentation. Accordingly, sample 1, designated style "Galveston" is classifiable under the provision for other men's or boys' wearing apparel, not ornamented, of wool, not knit in item 380.63, TSUS, dutiable at the rate of 25 cents per pound plus 21 percent ad valorem, if valued not over $4 per pound, or in item 380.66, TSUS, dutiable at the rate of 37.5 cents per pound plus 21 percent ad valorem, if valued over $4 per pound.

Strips of leather, rectangular in shape, such as the outer back loop on style "Brighton" are neither textile material, nor an applique or any other specifically named articles in paragraph 3(a)(iv) of headnote 3 that would constitute ornamentation. However, the inverted box pleat on style "Brighton", held in place by stitching, is tucking, and since it is nonexpandable, is considered nonfunctional and constitutes ornamentation. Accordingly sample 2, designated style "Brighton" is classifiable under the provision for other men's or boys' wearing apparel, ornamented, of wool in item 380.02, TSUS, dutiable at the rate of 42.5 percent ad valorem.

While the belt loop overlay on style "Brighton" would not constitute ornamentation, as such loops are necessary to secure the belt, the oval shaped belt loop overlay on style "Chelsea" constitutes ornamentation as an applique. The distinction between the two overlays is that the "Chelsea" coat contains additional leather belt loops in close proximity to the overlay (2 inches on either side of it) that, together with the other loops, provide sufficient support for the belt, especially since the garment is essentially supported at the shoulders rather than the waist. The support sufficiency of the leather loops, when considered in conjunction with the marked contrast in the appearance of the overlay to these leather belt loops, leads to the conclusion that the applique is primarily decorative in nature. Accordingly, sample 3, designated style "Chelsea" is classifiable under the provision for women's, girls' or infants' lace or net wearing apparel, whether or not ornamented and other women's, girls', or infants' wearing apparel, ornamented, of wool, in item 382.02, TSUS, and is dutiable at the rate of 42.5 percent ad valorem.

You have also submitted a piece of back section, designated "sampler" which is identical in construction to the back section of the style "Chelsea" except that instead of an overlay, the oval shaped belt loop is an insert. As such, it is an integral part of the section and would not constitute ornamentation. Style "Chelsea," containing the "sampler" back section in lieu of the overlay, would be classifiable under

the provision for other women's, girls' or infants' wearing apparel, not ornamented, of wool, not knit, in item 382.60, TSUS, if valued not over $4 per pound, dutiable at the rate of 25 cents per pound plus 21 percent ad valorem, or in item 382.63, TSUS, if valued over $4 per pound, dutiable at the rate of 37.5 cents per pound plus 21 percent ad valorem.

The merchandise described above may be subject to import restaints (quotas) based on international textile agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–147)

Classification: Liquid Proteins (Collagens)

Date: June 29, 1978
File: CLA–2:R:CV:MC
053515 CM

This is in reference to your letter concerning the tariff status of certain liquid proteins (collagens) from Argentina.

You indicate that the products have been considered edible gelatin and classified under item 455.20, Tariff Schedules of the United States (TSUS). However, this classification has been questioned. In this respect you ask for the classification of the following products:

PEG–101–U—Hydrolyzed collagen with 50 percent proteins and preservatives.
PEG–101–T—Hydrolyzed collagen with added tryptophane.
PEG–101/F—Hydrolyzed collagen with added tryptophane and flavor.
PEG–101/WD—Spray dried hydrolyzed collagen 97 percent proteins.
PEG–101/TD—Spray dried hydrolyzed collagen with added tryptophane.

The information furnished indicates that the products are hydrolyzed animal collagens containing amino acids.

The products are not considered edible preparations. The term "edible preparations" is defined in headnote 3, subpart B, part 15, schedule 1, TSUS, as embracing only substances prepared and chiefly used as a human food or as an ingredient in such food, but such term does not include any substances provided for in schedule 4 (except pt. 2E thereof) or schedule 5 (except pt. 1K thereof). They are also not gelatins in that they have undergone partial hydrolyzation.

The products identified as PEG 101–U and PEG/WD, which are amino acid substances, are classifiable under the provision for mixtures of two or more organic compounds, in item 430.00, TSUS, with duty at the rate of 5 percent ad valorem but not less than the highest rate applicable to any component material. On the basis that the highest rate is for polypeptides under the provision for other nitrogenous compounds in item 425.52, TSUS, the rate of duty is 1.5 cents per pound plus 7.5 percent ad valorem under this provision.

The products identified as PEG 101–T, 101–F and 101–TD with added tryptophane derived synthetically from a benzenoid source, are classifiable under the provision for mixtures in whole or in part of benzenoid chemicals, in item 409.00, TSUS, dutiable at the rate of 3.5 cents per pound plus 22.5 percent ad valorem. If the tryptophane is a nonbenzenoid, the mixture is classifiable under item 430.00, TSUS, with duty at the rate of 1.5 cents per pound plus 7.5 percent ad valorem under item 425.52, TSUS.

Articles classifiable under item 409.00, TSUS, may be entitled to entry free of duty upon compliance with the provisions of general headnote 3(c), TSUS, and the applicable Customs Regulations, copies enclosed. If there is a failure to comply, they would be dutiable at the rate stated for that item.

Item 425.52, TSUS, is included in the generalized system of preferences, and articles dutiable under that provision would not be subject to the duty upon compliance as indicated herein; however, the applicable rate of duty to the articles would be under item 430.00, TSUS, which is at the rate of 5 percent ad valorem. A failure to comply would subject the articles to the rates under item 425.52, TSUS.

Benzenoid products competitive with similar products of domestic origin are subject to ad valorem duties based on the American selling price of any similar competitive article manufactured or produced in the United States.

(C.S.D. 79–148)

Classification: Plywood With Face Plies of Different Kinds of Wood Veneer

Date: June 29, 1978
File: CLA–2:R:CV:MC
051944 AL

Your letter of May 3, 1977, relating to the tariff classification of certain plywood from Korea has been under consideration.

You described this plywood as having a face ply of Palapi wood veneer (one of the Tarrieta species), a hardwood, and the other

side faced with Lauan. The question presented is, how is tariff classification determined? A sample was submitted.

Generally, if Customs officers at the ports of entry where this plywood is entered find that the ply of wood veneer on one side of the plywood is of a better grade than the ply of veneer on the other side, then the side with the better grade of veneer is the face ply for tariff purposes.

Examination of your submitted sample reveals that the grade of the ply of Mengkulana wood is equally as good as the grade of the ply of Lauan wood. Thus, two tariff descriptions are equally applicable to plywood represented by the sample: With face ply of Mengkulang (Palapi), tariff classification is under item 240.23, Tariff Schedules of the United States (TSUS), with duty at the rate of 10 percent ad valorem; with face ply of Lauan, classification is under item 240.17, TSUS, with duty at the rate of 20 percent ad valorem.

General interpretative rule 10(d), TSUS, reads:

> If two or more tariff descriptions are equally applicable to an article, such article shall be subject to duty under the description for which the original statutory rate is highest, and, should the highest original statutory rate be applicable to two or more of such descriptions, the article shall be subject to duty under that one of such descriptions which first appears in the schedules;

The statutory rate for each of items 240.17 and 240.23, TSUS, is 40 percent ad valorem. The description which first appears in the schedules is that for item 240.17, TSUS. Accordingly, the applicable rate of duty is 20 percent ad valorem.

(C.S.D. 79–149)

Classification: Offset Printing Inks

Date: June 15, 1978
File: CLA–2:R:CV:MC
059147 JH

Your letter of January 31, 1978, concerns the dutiable status of Process Litho Inks from Mexico.

AY–1152 Yellow Ink is said to consist of a pigment yellow 12, esterified wood rosin, linseed alkyd varnish, and refined and deodorized kerosene.

AR–1152 Red Ink is said to be composed of a pigment red 52, esterfied wood rosin, linseed alkyd varnish, refined and deodorized kerosene.

AB–1152 Blue Ink is described as containing pigment blue 15, esterified wood rosin, linseed alkyd varnish, and refined and deodorized kerosene.

The products are said to be used as offset printing inks.

Accordingly, they are classifiable under the provision for other inks in item 474.26, Tariff Schedules of the United States (TSUS). The rate of duty is 2 percent ad valorem.

As products of Mexico classifiable in item 474.26, TSUS, may be entitled to duty free benefits under the generalized system of preferences, your attention is invited to the copy of general headnote 3(c), enclosed, which sets out the requirements to be met.

(C.S.D. 79–150)

Classification: Longan Pitted, Peeled, and Canned in Sirup

Date: July 19, 1978
File: CLA–2:R:CV:MC
059208 CM

Your letter of February 17, 1978, requests the tariff status of longan from Taiwan.

The product is described as prepared and preserved longan which has been peeled, pitted, and canned in sirup. You indicate that a longan is a fruit of an Asiatic tree of the soapberry family. You ask that it be considered a berry rather than a nut for the purpose of classification.

On the basis of an established and uniform practice, the classification of longan, peeled, pitted, and canned in sirup, is as other edible nuts, prepared or preserved, in item 145.60, Tariff Schedules of the United States, dutiable at the rate of 28 percent ad valorem.

(C.S.D. 79–151)

Classification: Polypropylene Rope Used as Mooring Line on Ocean-Going Vessels

Date: July 13, 1978
File: CLA–2:R:CV:MC
059250 EA

In your letter of March 7, 1978, you requested the tariff classification of polypropylene rope used as mooring line on ocean-going vessels.

A sample was submitted. The sample rope, approximately 4 inches in diameter, consists of four double plies that have been braided. Each ply is approximately 1 inch in diameter and is formed from 13 three-ply yarns which are twisted around 38 single-ply yarns. There is a nonelastic strand of contrasting colored polypropylene cord running through the rope, approximately one-fourth inch in diameter.

Headnote 1(a), part 2, schedule 3, Tariff Schedules of the United States (TSUS), defines the term "cordage" as assemblages of textile fibers or yarns in approximately cylindrical form and of continuous length, and does not include braids. The subject merchandise is, therefore, not classifiable under the cordage provisions of the tariff schedules, but is instead classifiable under the provision for braids not suitable for making or ornamenting headwear.

You suggest classification under this provision, in item 348.00, TSUS. Classification in item 348.00, TSUS, requires that the braid contain a nonelastic core. The "Tariff Classification Study, Explanatory Material" (CIE 1/64, Jan. 2, 1964), a source of legislative history with regard to the TSUS, states on page 227, that prior to the enactment of the TSUS, those articles that consist of a braided sheath surrounding an inner core had been excluded by the Customs Service, from the meaning of the term braids. While the TSUS definition for braids includes both the coreless and core variety, they are still distinct for classification purposes, and based on the reference in the study, it appears that Congress intended this distinction to be a statutory adoption of the prior practice. The language in the TSUS, that braids containing a core be of tubular construction, similarly requires that the braided portion of the rope be a covering or sheath since tubular construction implies a hollow inner portion.

In light of the above, the polypropylene rope would not be considered as containing a core for tariff purposes. The four double plies constitute virtually the entire body of the rope as opposed to its covering and the one-fourth inch cord, rather than occupying a fixed hollow center portion of the rope, weaves in and out of the larger strands. Accordingly, merchandise represented by the sample is classifiable under the provision for braids not suitable for making or ornamenting headwear, other in item 348.85, TSUS, with duty depending on the country of origin of the merchandise, either at the column 1 rate of 21 percent ad valorem or at the column 2 rate of 90 percent ad valorem. General headnotes 3(e) and 3(f), TSUS, copy enclosed, explain the applicability of column 1 and column 2 rates of duty.

You also inquire as to the classification of the same polypropylene rope with eye splices on each end of each coil. Without more specific information concerning the length and specific uses of the spliced rope,

we are unable to determine its tariff status with certainty. Headnote 1, of part 4A, schedule 3, TSUS, such part encompassing the braid provisions, provides that the provisions in that part are applicable to braids in the piece. By the splicing of eyes at each end of each coil, the rope would probably not be considered to be in the piece. The eye splices probably dedicate the coil to a specific use and, as such, the coils of rope would be articles for tariff purposes.

Accordingly, the coils of rope are likely to be classifiable under the provision for articles not specially provided for, of textile materials; other articles not ornamented; of manmade fibers; other; other in item 389.62, TSUS, with duty depending on the country of origin of the merchandise, either at the column 1 rate of 25 cents per pound plus 15 percent ad valorem or at the column 2 rate of 45 cents per pound plus 65 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–152)

Classification: Whether Carpet Backing Cloth is "Wholly of Jute"

Date: July 24, 1978
File: CLA–2:R:CV:MC
054413 PR

This is in reply to your letter of November 16, 1977, concerning the tariff status of jute carpet backing cloth manufactured in India. You call the merchandise "Anti-Stat Carpet Backing."

The submitted sample is a woven burlap-appearing fabric that is stated to be 99.5 percent jute and 0.5 percent nylon "zefstat." The nylon "zefstat," which is manufactured in the United States, is used in the fabric to prevent the buildup of static electricity in carpets. You indicate that you will be importing the merchandise in widths greater than 100 inches. The submitted samples are not bleached and not colored and we assume that they are not flame resistant. We also assume that the merchandise will be imported in material lengths.

Item 335.40, Tariff Schedules of the United States (TSUS), provides duty-free treatment for woven fabrics, wholly of jute, not bleached, not colored, and not flame resistant. General headnote 9(f)(ii), TSUS, states that the term "wholly of" means that the article is,

except for negligible or insignificant quantities of some other material or materials, composed completely of the named material. The question thus presented by your inquiry is whether jute fabric which is 99.5 percent jute and 0.5 percent antistatic material, is "wholly of" jute for tariff purposes.

The antistatic material has been intentionally added to the fabric to assist in the primary function of the merchandise and is, therefore, not negligible or insignificant. Accordingly, fabric as represented by the submitted samples and as described above is classifiable under the provisions for other woven jute fabrics, not wholly of jute, in either item 335.70, TSUS, if not over 4 ounces per square yard, with duty at the rate of 3.2. percent ad valorem, or, if over 4 ounces per square yard, in item 335.85, TSUS, with duty at the rate of 5 percent ad valorem.

Merchandise which is a product of India and is classifiable in items 335.70 or 335.85 may be entitled to duty-free treatment under the generalized system of preferences (GSP). For your assistance, we have enclosed a copy of general headnote 3(c), TSUS, which explains the GSP.

(C.S.D. 79–153)

Classification: Whether Tie-Strings on a Skirt Waistband and on a Blouse Constitute Ornamentation

Date: July 25, 1978
File: CLA–2:R:CV:MC
059152 LR

This is in reply to your letter of January 31, 1978, on behalf of (name) concerning the tariff status of certain women's clothing from Canada. Four samples were submitted.

The first sample, labeled A202, is a skirt made out of a multicolored cotton fabric with a floral design. It is stated that when imported it will be made of viscose, a type of rayon. The skirt has a waistband, a side zipper, two slash pockets, and a 3½-inch yoke below the waistband. The body of the skirt is gathered and sewn to the yoke creating a full skirt. Attached to the front portion of the waistband are two 28-inch tie strings made of the same fabric which are secured near the side seams with the greater portions hanging freely for the purpose of tying. These strings allow for adjustment of the waistband and do not constitute ornamentation for tariff purposes.

The second sample, identified as style 2004B, is a cotton skirt with a blue floral design which you state will also be made of viscose when

imported. It has a waistband below which is a 4-inch yoke, a full front opening with eight buttons, and two side pockets. The body of the skirt is gathered and sewn to the yoke creating a full skirt.

The third sample, labeled style 2065, is described as a bowling shirt. It is a short-sleeved blouse made of viscose fabric with a floral design. It has a pointed collar and a full front four-buttoned opening. There is a 4½-inch-wide yoke on the back of the blouse.

The fourth sample, labeled A272, is a pink long-sleeved blouse with a floral design stated to be made of 100 percent viscose. It has a six-buttoned full front opening and a rounded ruffled collar. Attached to the neckline under the collar are two tie strings made of the same fabric that are designed to be tied in a bow. Each strip is about three-quarters inch wide and 19 inches long. These strips of fabric have been added primarily for decorative effect since closure at the neck is achieved by a button and buttonhole at the very top of the blouse.

The first three samples, styles A202, 2004B, and 2065, if in chief value of manmade fibers, are classifiable under the provision for other women's, girls', or infants' wearing apparel not ornamented, not knit, in item 382.81, Tariff Schedules of the United States (TSUS), with duty at the rate of 25 cents per pound plus 27.5 percent ad valorem. If in chief value of cotton, classification is in item 382.33, TSUS, with duty at the rate of 16.5 percent ad valorem.

The fourth sample, style A272, is classifiable under the provision for other women's, girls', or infants' ornamented wearing apparel, not knit, of manmade fibers in item 382.04, TSUS, with duty at the rate of 42.5 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

Your samples are being returned under separate cover.

(C.S.D. 79–154)

Classification: Garlic and Onion Extracts

Date: July 25, 1978
File: CLA-2:R:CV:MC
053910 CM

Your letter of October 6, 1977, requests the tariff status of certain extracts, apparently the products of countries or areas entitled to the most-favored-nation rate of duty.

The garlic extract is spray-dried on two types of carriers, either malt dextrin inert or dried inert garlic pulp. The onion extract is spray-dried on a malt dextrin carrier with no flavors added or with toasted onion flavor added.

The above products are processed by crushing, oleoresin extraction, distillation, homogenization, and drying. The drying process takes place in a tower where homogenized liquid (product plus inert plus water) is sprayed against a column of hot air. The moisture is driven off. The end product is collected and then packed in its final form. You ask that the products be considered favoring extracts and classifiable under item 450.20, Tariff Schedules of the United States (TSUS).

These extracts are classifiable under the provision for flavoring extracts * * * not containing alcohol * * * other, in item 450.20, TSUS, dutiable at the rate of 6 percent ad valorem. If the extracts are imported in ampoules, capsules, tablets, or similar forms, they are dutiable in item 450.10, TSUS, at the rate of 6 percent ad valorem.

Articles classifiable under item 450.10 and 450.20, TSUS, may be entitled to entry free of duty upon compliance with the provisions of general headnote 3(c), TSUS, and the applicable Customs Regulations, copies enclosed. If there is a failure to comply, they would be dutiable at the rates indicated herein.

Copies of the correspondence have been furnished to Bureau of Foods, Food and Drug Administration, Department of Health, Education, and Welfare, Washington, D.C. 20204, for their comments on labeling and requirements. Any additional information should be addressed to that agency.

(C.S.D. 79-155)

Classification: Glucola Solution Used as Diagnostic Reagent

Date: July 25, 1978
File: CLA-2:R:CV:MC
059187 MG

This is in reply to your letter of February 16, 1978, concerning the tariff status of Glucola. The country of origin was not specified.

Glucola, a flavored aqueous solution consisting of specific carbohydrates and traces of inorganic materials, is a diagnostic reagent. It is used as the carbohydrate challenge in the standard glucose tolerance test, and its essential characteristic is its standardized carbohydrate content.

The product literature supplied with your request for a ruling indicates that Glucola, when ingested by a patient, is not as likely to cause nausea and vomiting as conventional pure glucose loads. This statement, however, suggests that, due to the extreme sweetness of the material, it may nonetheless cause nausea and vomiting. In addition, the product literature states that Glucola should not be consumed by frankly hyperglycemic patients. In light of these facts we are unable to conclude that Glucola is "fit for use as a beverage" as required for classification in item 166.40, Tariff Schedules of the United States (TSUS).

The product is classifiable under the provision for mixtures not specially provided for in item 432.00, TSUS, and is dutiable at the column 1 rate of 5 percent ad valorem, but not less than the highest rate applicable to any component material, and at the column 2 rate of 25 percent ad valorem, but not less than the highest rate applicable to any component material.

The component material having the highest rate of duty is either the maltose, maltotriose, and higher saccharides or the glucose, whichever has the higher duty. The maltose, maltotriose, and higher saccharides are classifiable under the provision for other polysaccharides, rare saccharides, and their polyhydric alcohols in item 493.68, TSUS, and are dutiable at the column 1 rate of 10 percent ad valorem and at the column 2 rate of 50 percent ad valorem. The glucose is classifiable either under the provision for dextrose in item 155.60 or dextrose sirup in item 155.65, both of which are dutiable at the column 1 rate of 1.6 cents per pound and at the column 2 rate of 2 cents per pound.

To assist you in determining whether the column 1 or 2 rate of duty is applicable, we have enclosed a copy of general headnote 3.

(C.S.D. 79–156)

Classification: Whether a Self-Fringed Scarf is Ornamented

Date: July 31, 1978
File: CLA–2:R:CV:MC
059158 EA

This is in reply to your inquiry of February 1, 1978, requesting the tariff classification of fringed scarves. A sample was submitted. The sample consists of a woven cashmere wool scarf, approximately 48 inches long, and 12½ inches wide. The length includes fringe at each end about five-sixteenths inch in length. You suggest that the scarf should not be considered as ornamented because it is finished with a

self-fringe, rather than being added to a finished scarf, and is so finished as an alternative to a machine hem.

It is a correct statement of the law, as you assert, that an article containing fringe is not always classifiable as an ornamented article simply because of the fringe. However, fringe which is nonfunctional, or the functional purpose of which is merely incidental to its principal function of adorning, embellishing, decorating, or enhancing the appearance of a textile article, constitutes ornamentation for tariff classification purposes.

In the case of *Inter-Maritime Forwarding Co. Inc.*, v. *United States*, 69 Cust. Ct. 138, C.D. 4384 (1972), the Customs Court held that self-fringe scarves were classifiable as ornamented wearing apparel. The court determined that fringe, whether produced in the course of manufacturing the article itself or as an independent entity subsequently attached to it, constitutes ornamentation if the primary purpose of the fringe is ornamental. It is additionally noted that under headnote 3(b)(iii), schedule 3, Tariff Schedules of the United States (TSUS), fringe need not have a separate existence from the article on which it appears in order to constitute ornamentation.

As we view the submitted sample, it appears that the scarf is primarily fringed to produce a decorative effect. Accordingly, the sample is classifiable under the provision for mufflers, scarves, shawls, and veils, all the foregoing of textile materials, other in item 372.10. Tariff Schedules of the United States, and is dutiable at the rate of 30 percent ad valorem.

The merchandise described above may be subject to import restrictions (quotas) based on international textile agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–157)

Classification: Whether Certain Heat Transfer Articles are Decalcomanias

Date: July 31, 1978
File: CLA–2:R:CV:MC
059040 LR

This is in reply to your letter of December 28, 1977, concerning the tariff status of certain heat transfer items from Japan. Two samples were submitted.

The first sample is a yellow piece of paperbacked flocking with the Letters "Dartmouth" superimposed thereon, According to a Customs laboratory report, the letters consist of three, layers including a layer of cotton flock bonded to a layer of urethane foam backed by a layer of hear-actived, polyamide-type plastic. You indicate that the letters are applied to a T-shirt or other textile surface with heat and the backing is removed. Merchandise as represented by the sample is classifiable under the provision for other decalcomanias, not backed with metal leaf in item 273.75, Tariff Schedules of the United States (TSUS), with duty at the rate of 10 cents per pound.

The second sample is an orange and black "K" emblem. You indicate that no backing is removed and the letter is applied with heat directly to another textile surface. According to a Customs laboratory report, the emblem consists of the following four layers: An orange polyester knit pile fabric bonded with a layer of acrylic-type adhesive to a layer of black polyester knit pile fabric which is backed by a layer of heat-actived, polyamide-type plastic. Merchandise as represented by the sample is not considered a decalcomania for tariff purposes since the textile lettering is not transferred to a surface from transfer paper as is the first sample but is directly applied to another surface without removal of a backing. Classification is under one of the provisions for other articles of textile materials not specially provided for, nor ornamented and not knit, depending on the component material in chief value. For purposes of this determination, in accordance with headnote 4(b), schedule 3, TSUS, the outer plastic coating is disregarded. Assuming the emblem is in chief value of the polyester knit fabric, it is classifiable in item 389.62, TSUS, with duty at the rate of 25 cents per pound plus 15 percent ad valorem.

Merchandise classifiable in item 389.62, TSUS, may be subject to imports restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–158)

Classification: Tapestries Classifiable as Floor Coverings

Date: August 1, 1978
File: CLA–2:R:CV:MC
048691 PR

This is in reply to your letter of November 27, 1976, concerning the tariff status of certain tapestries. The literature accompanying your

letter indicates they are handwoven and handknotted with wool, silk, or wool and silk, in either India or France.

In your letter, you state that the tapestries are based on designs made by American artists who prepare special maquettes (models) which are woven abroad and limited to from 8 to 20 editions. After the merchandise is imported, it is signed by the individual artist.

It is your belief that the imported articles are works of art and that they should be subjected to the same duty-free treatment as editions of sculptures. The provision to which you are referring, item 765.15, Tariff Schedules of the United States (TSUS), provides for duty-free treatment for original sculptures and statuary (including the first 10 castings, replicas, or reproductions made from a sculptor's original work or model with or without a change in scale). That provision by its own express wording is limited in application only to sculptures and statuary.

Neither item 765.15 nor any other provision concerning works of art is applicable to the above-described merchandise. Item 765.03, TSUS, provides duty-free treatment for paintings, pastels, drawings, and sketches. Item 765.10, TSUS, provides duty-free treatment for engravings, etchings, lithographs, woodcuts, and other prints. Item 765.20, TSUS, provides duty-free treatment for original mosaics. Item 765.25, TSUS, provides for duty-free treatment of "original" works of the free fine arts not provided for elsewhere. Item 765.30, TSUS, provides for works of art which are productions of American artists residing temporarily abroad.

The U.S. Customs Service is an administrative agency and is without authority to waive or modify any of the provisions of the tariff schedules, which are statutory enactments by the Congress.

There exists an established and uniform practice to classify the subject merchandise under the provision for other floor coverings of pile or tufted construction, in which the pile was hand inserted or hand knotted during weaving or knitting, valued over 66⅔ cents per square foot, in item 360.15, TSUS, with duty at the rate of 11 percent ad valorem. Accordingly, the merchandise is classifiable and dutiable under that tariff provision.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–159)

Classification: Bib-Type Denim Shorts

Date: August 1, 1978
File: CLA–2:R:CV:MC
059148 HG

This is in reply to your letter of January 25, 1978, concerning the tariff status of certain garments which we assume are products of Hong Kong. A sample was submitted.

The sample is a pair of bib-type denim shorts which are stated to be 100 percent cotton. The bib is stitched to the waistband of the garment on the right side and is attached to the left side by a single button. It has a front zippered fly with a metal button closure, a waistband with four sets of double belt loops, two front seam pockets, two front simulated seam pockets, two front welt pockets, two rear patch pockets, and two rear welt pockets. The two rear patch pockets each have an imitation leather insert which extends in a slightly curved manner across the approximate midsection of the pocket. A photocopy of the front pocket arrangement is attached as addendum 1 and a photocopy of the rear pocket arrangement is attached as addendum 2.

If merchandise as represented by the submitted sample is designed for wear by men or boys, it is classifiable under the provision for other men's or boys' wearing apparel, not ornamented, of cotton, not knit, other, in item 380.39, Tariff Schedules of the United States (TSUS), with duty at the rate of 16.5 percent ad valorem. If it is designed for wear by women or girls, or can be worn by both males and females and is not identifiable as being intended exclusively for the wear of men or boys, the merchandise is classifiable under the provision for other women's or girls' wearing apparel, not ornamented, of cotton, not knit, other, in item 382.33, TSUS, with duty at the rate of 16.5 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–160)

Classification: Whether T-Shirt's Sew-on Patches Bearing Manufacturer's Logo Constitute Ornamentation

Date: August 9, 1978
File: CLA–2:R:CV:MC
059172 HG

This is in reply to your letter of February 3, 1978, concerning the tariff status of certain garments. No country of origin was given. Two sew-on patches which have been embroidered with a lion and a lion cub, a leather patch which has been embossed with a lion and cub, and a sample garment were submitted.

The submitted garment is a knit cotton T-shirt with a small embroidered lion and lion cub in the left breast area. You state that the lion and cub are a logo or trademark and should not be considered ornamentation.

Headnote 3, schedule 3, Tariff Schedules of the United States (TSUS), provides that the term "ornamented" refers to textile articles which are ornamented with, among other things, yarns, embroidery, textile fabric, applique, or ornaments. The U.S. Customs Court has ruled that trademarks or other methods of identifying a manufacturer are not exempted from the provisions of that definition. See *Colonial Corp.* v. *United States*, 62, Cust. Ct. 502, C.D. 3815 (1969). Accordingly, a manufacturer's embroidered trademark or logo applied to the outer surface of a garment constitutes ornamentation for tariff purposes if: (1) The garment is of textile materials; (2) the logo ornaments, embellishes, or decorates the garment; and (3) the ornamental purpose of the trademark or logo outweighs any functional purpose the logo may serve. For tariff purposes, the identification of a manufacturer, by itself, is not considered to be a functional purpose. In order to be functional, a feature must contribute to the intended or normal usage of a garment or serve a purpose related to the function or normal styling of the garment.

In the instant case, the embroidered logo on the sample T-shirt falls within the provisions of headnote 3, schedule 3, TSUS, and meets the three criteria enumerated above. Therefore, it constitutes ornamentation for tariff purposes. If the embroidered sew-on patches which you

submitted are applied to the outer surface of the T-shirts, they also would constitute ornamentation for tariff purposes. The leather patch would not cause the garment to be ornamented.

You state that you have been informed that some manufacturers do not pay a higher rate of duty for the display of their logos on the outside of their garments. To the best of our knowledge, all garments with logos that meet the criteria for ornamentation are being classified under the ornamented wearing apparel provisions of the tariff schedules. However, the Customs Service has ruled that small rectangular manufacturers' labels containing only plain printed or plain script letters in an orderly arrangement do not serve to enhance the appearance of a garment and, therefore, do not constitute ornamentation for tariff purposes.

Since the sample garment does not appear to be designed for the exclusive use of men or boys, merchandise as represented by the submitted sample is classifiable under the provision for other ornamented women's, girls', or infants' wearing apparel, of cotton, in item 382.00, TSUS, with duty either at the column 1 rate of 35 percent ad valorem or at the column 2 rate of 90 percent ad valorem. Column 2 rates of duty are applicable to products of those countries listed in general headnote 3(e), copy enclosed. Products of all other countries are entitled to column 1 rates of duty.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–161)

Classification: Disc-Type Chart Depicting Baseball Strategies

Date: August 16, 1978
File: CLA–2:R:CV:MC
056617 MG

This is in reply to your letter of April 23, 1978, concerning the tariff status of "Dial-A-Coach," a product of Taiwan.

The sample consists of a plastic sheet folded in half and fastened to a plastic disc-shaped insertion at the center by a metal grommet. A diagram of a baseball diamond appears on either side of the sample. The disc insertion can be rotated so as to cause wording to appear in various slits representing players which appear on both diagrams. In

this manner "Dial-A-Coach" instructs the user with respect to infield and outfield responses to plays selected on the "Dial-A-Coach."

"Dial-A-Coach" is classifiable under the provision for maps, atlases, and charts in item 273.35, Tariff Schedules of the United States and is duty free. You should be informed that provisions of copyright law may be involved in the importation of this merchandise.

(C.S.D. 79–162)

Classification: Whether a Knit Fabric is "Napped" or "Pile"

Date: August 23, 1978
File: CLA–2:R:CV:MC
052223 PR

This is in reply to your letter of April 22, 1977, on behalf of (client) concerning the tariff status of certain fabric manufactured by (manufacturer).

The submitted swatch of fabric has a heavy layer of rubber or plastics on one side. The district director, Chicago, believes that the merchandise should be classified under the provision for textile fabrics not specially provided for, of manmade fibers, in item 359.50, Tariff Schedules of the United States (TSUS). Since the merchandise is the subject of an entry which has been liquidated and has not been protested, this inquiry, which was made directly to Customs, is not being treated as a request for internal advice. The importer, through its agent, believes that the merchandise should be classified under the provision for woven or knit fabrics (except pile or tufted fabrics), of manmade fibers, coated or filled, or laminated, with rubber or plastics material, over 70 percent by weight of that rubber or plastics material, in item 355.81, TSUS. The difference between the two classifications is that the district director believes the merchandise is a "pile" fabric and, therefore, precluded from classification in item 355.81.

There appears to be no disagreement as to the manner of construction of the subject merchandise. The district director describes the merchandise in his report as "two interknit textile fiber structures, one of which is teased out to form the pile." The importer believes that the merchandise is not a pile fabric but is, in fact, a napped fabric. The importer describes the method of manufacture as passing the initial knitted fabric through a series of revolving cylinders covered with metal points or teasel burrs.

Our examination of the merchandise also supports both parties concerning the manner in which that merchandise was constructed.

There do not appear to be any projecting yarns from the fabric; all the projections are in the form of fibers which appear to be connected to the yarns which form the knit fabric itself.

Both the district director and the importer cite *Tilton Textile Corporation* v. *United States*, 77 Cust. Ct. 27, C.D. 4670 (1976). We note that the *Tilton* case distinguishes a napped fabric from a pile fabric by quoting a definition of a napped fabric which was given to them by a witness as "one whose surface has been brushed with wire brushes; can be a teaseling operation. The fibers of the surface have been disturbed by a rubbing action which produces a soft sueded-type finish." (At p. 31.) After an extended technical examination of fabrics, the Customs Court ruled in that case that to be classified as a "pile" fabric a cloth had to be covered at least in part by raised pile projecting from the surface. However, the court did not touch on what actually constitutes a "pile." To complicate matters the court, at page 41, quoted from *M. J. Corbett & Company* v. *United States*, 26 Treas. Dec. 970, T.D. 34545 (1914), in pertinent part as follows:

> As ordinarily understood a pile fabric is a fabric in which a soft covering or nap overspreads and conceals to a great extent the interlacing of the warp and filling yarns. This nap is formed by a series of threads which issue from the body of the fabric at right angles. In some fabrics the nap or pile is in the form of a series of loops.

A close reading of the above quotation indicates that the definition of napped which that court was using was that a napped fabric had to have projecting yarns or threads. That is not the case in the instant fabric which merely has projecting fibers.

All of the textile dictionaries which we have consulted define "napped" in essence as a fuzzy surface produced on a fabric by raising fibers from the yarns comprising that fabric. In addition, "Textiles: Fiber to Fabric," fourth edition, 1967, at page 142, states, "A napped fabric should not be confused with a pile-weave fabric. In the pile weave, the thickness is a true third dimension produced by loops from an extra warp or filling yarn. In the napped fabrics, the thickness is only a surface fuzziness that is the result of a brushing process."

In a ruling abstracted as T.D. 66–200(9), the Customs Service held that a knit fabric with a nap made by brushing or teaseling is classifiable as a knit fabric, in item 345.50, TSUS, and not as a pile fabric.

In view of the above, the fact that this office has continually refrained from classifying napped fabrics as pile fabrics, and that from the information available to this office, "napped" fabrics are neither commonly nor commercially known as "pile" fabrics; the instant merchandise is not considered a pile fabric for tariff purposes. Ac-

cordingly, the instant merchandise, if imported in material lengths and if over 70 percent by weight of rubber or plastics as stated by the importer, is classifiable in item 355.81, TSUS.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–163)

Classification: Whether Panties With Decorative Edging Are "Ornamented"

Date: September 1, 1978
File: CLA–2:R:CV:MC
054288 LCS

This is in reply to your letter of November 7, 1977, in which you requested information concerning the tariff status of women's panties, manufactured in Hong Kong, samples of which you enclosed with your request.

The first sample, identified as article No. 3290, is knit of manmade fibers, stated to be 100 percent nylon, with a cotton liner sewn into the crotch of the garment. There is a repeating diamond-shaped pattern throughout the body of the fabric, formed by a drop-stitched technique during the knitting process; however, there is neither sufficient openwork nor delicacy to constitute lace for tariff purposes. Around each leg opening and at the waistband, there has been sewn an elasticized strip with a decorative edging incorporated therein.

The second sample which you submitted with your inquiry and identified as article No. 555 is a printed knit panty, stated to be of 100 percent cotton, with a cotton liner sewn into the crotch. This garment is joined together at either side of the waist by means of plastic rings, each measuring approximately five-eighths inch in diameter. It also has elasticized strips with decorative edgings at each leg opening and at the waist.

Although edgings are a form of ornamentation provided for in headnote (a)(iii), schedule 3, Tariff Schedules of the United States (TSUS), and need not have a separate existence to be so considered pursuant to headnote 3(b), schedule 3, TSUS, there is an established and uniform practice of treating garments such as those at issue herein as unornamented when the elasticized strips with integral decorative

edgings are determined to be primarily functional and only incidentally decorative. With respect to the instant samples, these elasticized strips serve the primary functional purpose of finishing the edges at the waist and leg openings and fitting these openings to the wearer.

Accordingly, merchandise represented by the sample identified as article No. 3290 is properly classifiable under the provision for other underwear of manmade fibers, not ornamented, in item 378.60, TSUS, dutiable as a product of Hong Kong at the column 1 rate of 25 cents per pound plus 35 percent ad valorem.

Merchandise represented by the sample identified as article No. 555 is properly classifiable under the provisions for other knit underwear of vegetable fibers, not ornamented, in item 378.10, TSUS, if valued not over $4 per pound, with duty at the column 1 rate of 25 percent ad valorem, or in item 378.15, TSUS, if valued over $4 per pound, with duty at the column 1 rate of 15 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–164)

Classification: Woolen Blanket, Scarf, and Stole, All Having Fringe

Date: September 13, 1978
File: CLA–2:R:CV:MC
059178 LR

This is in reply to your letter of January 23, 1978, concerning the tariff status of a scarf, a stole, and a blanket from Scotland. Although you indicate that two samples were enclosed we have received only one sample blanket. However, since you state that each article is of the same material and construction, we have adequate information to determine the tariff status of all of the described articles.

The submitted sample is a loosely woven green and gold plain blanket measuring 72 inches in length, including a 2-inch self-fringe on each end, and 50 inches in width, and is marked as containing 70 percent mohair and 30 percent wool. The fringe consists of warp threads extended beyond the woven fabric. Fringe is specifically provided as a method of ornamenting articles of textile materials in headnote 3(a)(iii), schedule 3, Tariff Schedules of the United States

(TSUS). In accordance with headnote 3(b), schedule 3, TSUS, fringe is not required to have a separate existence from the article on which it appears in order to constitute ornamentation for tariff purposes. Therefore, the fringe on the submitted blanket constitutes ornamentation notwithstanding the fact that it was formed during the creation of, rather than subsequently added to, the article on which it appears.

Accordingly, the blanket which you have submitted is properly classifiable under the provision for other ornamented blankets, of wool, not over 3 yards in length, in item 363.10, TSUS, with duty at the rate of 30 cents per pound plus 15 percent ad valorem.

The second article is described as a scarf measuring 9 inches by 72 inches made of the same wool fabric. Assuming the scarf has fringe similar to that contained on the blanket, it is classifiable under the provision for other ornamented scarves in item 273.10, TSUS, with duty at the rate of 30 percent ad valorem.

The last article you inquire about is a rectangular garment measuring 18 inches by 72 inches, also of the same material and construction as the blanket. Articles with these dimensions are considered stoles for tariff purposes. Assuming the ends are fringed, this garment is classifiable under the provision for other women's or girls' ornamented wearing apparel of wool in item 382.02, TSUS, with duty at the rate of 42.5 percent ad valorem.

You also inquire about the duty which would be imposed on similar fabric imported by the yard measuring 54 inches in width. General headnote 10(h), TSUS, provides that unless the context requires otherwise, a tariff description of an article covers such article whether finished or not finished. If the fabric contains the cutting lines for individual articles, thereby dedicating it to a specific use, it is considered for tariff purposes to be an unfinished article and classifiable under the provision for the article itself. However, in the absence of such cutting lines, the fabric is classifiable under one of the provisions for woven wool fabrics, according to its value. If valued not over $1.26⅔ per pound, it is classifiable in item 336.50, TSUS, with duty at the rate of 35.5 cents per pound plus 60 percent ad valorem. If it is valued over $1.26⅔ but not over $2 per pound, it is classifiable in item 336.55, TSUS, with duty at the rate of $1.135 per pound. If the fabric is valued over $2 per pound, it is classifiable in item 336.60, TSUS, with duty at the rate of 37.5 cents per pound plus 38 percent ad valorem.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you

write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

(C.S.D. 79–165)

Duty Assessment: Carnival Glass; Item 800.00, TSUS

Date: October 4, 1978
File: CLA–2:R:CV:MSP
055299 SF

In your letter of September 21, 1978, you inquired on behalf of your constituent (name) concerning so-called carnival glass purchased in Canada.

Carnival glass is an iridescent glassware, originally produced in the United States in the early 1900's. Under item 800.00, Tariff Schedules of the United States (TSUS), products of the United States which are returned after having been exported may be admitted duty free if certain requirements are met. In order for the goods to qualify for duty-free entry under item 800.00, TSUS, the importer must supply proof demonstrating that the product was produced in the United States.

While carnival glass was once solely produced in the United States, in recent years many copies of the original carnival glass have been produced not only domestically, but abroad as well.

Generally, unless the originals are marked with a date or place of manufacture, it is almost impossible to distinguish them from the newer domestic or foreign imitations, or even to show that they are of U.S. origin. H.R. 108 is a bill now pending before the Congress which addresses the problems presented by this situation where imported imitation antique glassware is not marked.

If the importer has evidence showing that any particular piece of carnival glass was produced in the United States, such proof should be submitted to the district director at the port of entry noted on the Customs receipt to see if item 800.00, TSUS, is applicable.

In view of the statutory requirements for the free entry of American goods returned, unless the importer can show that the carnival glass in question was produced in the United States, it must be classifiable under one of the dutiable provisions in the tariff schedules for articles of glass.

If we can provide any additional information or be of further assistance, please feel free to call on us.

(C.S.D. 79-166)

Value: Whether Royalties Paid for Exclusive License are Part of Dutiable Value of Machine

Date: October 5, 1978
File: R:CV:V RS
055232

Issue.—Is a royalty paid for the right to use a patented machine exclusively in a designated area a part of the dutiable value of the machine purchased by the importer?

Facts.—The licensor, a foreign corporation, manufactures and sells an extrusion machine used to produce precast concrete cored slabs. The licensor has applied for patents on this machine in both the United States and Canada and represents that it has the sole right to grant exclusive licenses to manufacture, sell, and use the machine and its products. The licensee, an American corporation, imported one of the machines for use in the manufacture of concrete products.

By agreement, the licensor granted to the licensee an exclusive license to manufacture concrete products with one or more machines at a given plant in a specifically defined geographical area and the right to sell such products inside and outside this area. The licensee agrees to pay the licensor an annual royalty based on production within the territory of the exclusive license. The royalty is stated in terms of cents or fraction of cents per square foot of commerical concrete production, depending on the total level of production at the plant. The minimum royalty for any annual period is $2,000, and the maximum is $5,000.

The agreement also provides that the licensee shall purchase the machine at a set price ($52,000), f.o.b. licensor's factory. The licensor warrants the equipment against defects in material and workmanship and agrees to provide service personnel at a per diem rate set forth in the agreement.

Law and analysis.—In *United States* v. *F. B. Vandergrift Co.* 26 CCPA 360 (1939), the Court of Customs and Patent Appeals held that a royalty fee paid in consideration for the exclusive right to purchase machines for export to the United States and the exclusive right to manufacture and sell such machine in this country and Canada is not part of the cost of production of the imported merchandise under section 402a of the Tariff Act of 1930, as amended (19 U.S.C. 1402).

The court recently ruled in *United States* v. *Imperial Products* — F. 2d —, C.A.D. 1203 (1978), that a patent license royalty paid for

the right to use imported brush heads to manufacture and sell patented brushes in the United States is not part of the selling or offering price of the imported brush heads. Therefore, the court concluded, it was not part of the dutiable value of the imported articles under section 402(b) of the Tariff Act of 1930, 19 U.S.C. 1401a(b). Other portions of the opinion, concerning separability of appraisement, are irrelevant to the issue considered here.

In each case, the importer purchased the article for a definite price in addition to the royalties. The licensing and sales agreements were made at the same time and contained in a single document. It appeared that the sale was contingent on the licensing agreement.

The court noted in *Vandergrift* that the right to use an article is one element of ownership. This means that a license is considered an integral part of the purchase agreement when it grants a right to use a purchased article without qualification detrimental to the seller or special benefit to the purchaser. Royalty fees paid for such a license would be part of the purchase price.

The licenses in *Vandergrift* and *Imperial Products* conferred specific rights which, on account of the patents, were not part of the right of use inherent in ownership of the purchased articles. In the former case, the license afforded an exclusive right to purchase, manufacture, sell, and use the machines in the United States and Canada. In the latter case, it conferred the right to use the imported article to make a patented brush. Therefore, the court in the former case concluded that the royalty payments were not part of the cost of production, and in the latter case, the court held that the payments were not part of the selling or offering price of the imported merchandise.

Holding.—The instant case is analogous to *Vandergrift* and *Imperial Products*. The license agreement confers on the buyer of the equipment a specific, "exclusive" right of use that is not normally considered an incident of ownership. This right is the "exclusive" right to use the purchased machine within a certain area for a definite period of time. Although the sale and the license agreement may be inseparable in the sense that neither would exist without the other, the royalty is not part of the sale or offering price or cost of production of the imported merchandise. Accordingly, it is not part of dutiable value, regardless of the statutory basis for valuation which the appraising officer applies to this case.

For the purpose of determining export value, Customs cannot assume, of course, that $52,000 is the price at which each machine was freely sold or offered for sale to all purchasers. The separability of appraisement rule announced in the *Imperial Products* case is inapplicable when the merchandise has not yet been appraised.

(C.S.D. 79-167)

Classification: Chrome-Colored Plated Polyester Strip

Date: August 1, 1978
File: CLA-2:R:CV:MC
059228 HG

This is in reply to your letter of March 1, 1978, concerning the tariff status of certain merchandise. No country of origin was given. A sample was submitted.

The submitted sample is a chrome-colored strip of what you state is 3-millimeter plated polyester with protective lacquer. We assume it consists of two or more layers laminated together. This strip appears to be over 0.06 inch but not over 1 inch in width and not over 0.01 inch in thickness. You state that the strips will be used to strengthen shower hoses.

If it is imported in lengths over 30 inches, merchandise as represented by the submitted sample and as described above is classifiable under the provision for laminated strips (in continous form), whether known as artificial straw, yarns, or by any other name, in item 309.25, Tariff Schedules of the United States (TSUS), with duty either at the column 1 rate of 12.5 cents per pound plus 15 percent ad valorem or at the column 2 rate of 45 cents per pound plus 65 percent ad valorem. Column 2 rates of duty are applicable to products of those countries listed in general headnote 3(e), copy enclosed. Products of all other countries are entitled to column 1 rates of duty.

The merchandise described above may be subject to import restraints (quotas) based on international textile trade agreements. If you desire further information in this regard, it is suggested that you write directly to our Duty Assessment Division, enclosing a copy of this letter and a sample of the merchandise with your inquiry.

General Notice

Extension of the Countervailing Duty Waiver Authority

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Termination of suspension of liquidation.

SUMMARY: This notice is to advise the public that the authority conferred upon the Secretary of the Treasury by the Trade Act of 1974 to waive the imposition of countervailing duties has been extended. The liquidation of merchandise subject to countervailing duty waivers entered on or after January 3, 1979, will now be resumed.

EFFECTIVE DATE: April 30, 1979.

FOR FURTHER INFORMATION CONTACT: James Lyons, Office of the Chief Counsel, U.S. Customs Service, Washington, D.C. 20229; 202–566–5476.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Tariff Act of 1930, as amended by the Trade Act of 1974 (Public Law 93–618, Jan. 3, 1975), authorized the Secretary of the Treasury to waive the imposition of countervailing duties on any article or merchandise during the 4-year period which began on the date of enactment of the Trade Act of 1974 if he determined that:

> (A) Adequate steps [had] been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he [had] determined [was] being paid or bestowed with respect to any article or merchandise;
>
> (B) There [was] a reasonable prospect that, under section 102 of the Trade Act of 1974 successful trade agreements would be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to other distortions of international trade; and
>
> (C) The imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations as amended (19 U.S.C. 1303(d)(2)).

When the Secretary's authority to grant such waivers expired on January 3, 1979, all merchandise then subject to waivers, entered or withdrawn from warehouse, for consumption became subject to the assessment of countervailing duties. However, the possibility that waiver extension legislation would be enacted during the current session of Congress retroactive to January 3, 1979, made it uncertain that liability would ultimately attach for countervailing duties on merchandise for which waivers were in effect. It was, therefore deemed appropriate to suspend the final liquidations of such entries, see 44

F.R. 141. In lieu of requiring the deposit of estimated countervailing duties, the posting of bonds or irrevocable letters of credit in an amount sufficient to cover potential liability for countervailing duties was considered sufficient to meet the obligations of the Secretary for protecting the revenue.

On March 27, 1979, the Senate passed and on April 3, 1979, the President signed into law the countervailing duty waiver extension bill, H.R. 1147, which extends the effective date of any waivers still in effect on January 2, 1979 (Public Law 96–6). This extension continues until whichever of the following dates first occurs:

(A) The date on which either House of Congress defeats on a vote of final passage, in accordance with the provisions of section 151 of the Trade Act of 1974, implementing legislation with respect to a multilateral trade agreement or agreements governing the use of subsidies.

(B) The date of enactment of such implementing legislation.

(C) The date such determination is revoked under section 1303(d)(3) of the Tariff Act of 1930, as amended.

(D) The date of adoption of a resolution of disapproval of such determination pursuant to section 1303(e)(2) of the Tariff Act of 1930, as amended.

(E) September 30, 1979.

The extention of the waiver authority eliminates the need to continue the suspension of liquidations on merchandise which had been subject to the waiver of countervailing duties on January 2, 1979. Accordingly, effective upon the date of publication of this notice in the Federal Register, liquidations will resume with respect to the above-described merchandise entered, or withdrawn from warehouse, for consumption on or after January 3, 1979. No countervailing duties will be collected on those products for which the Secretary had authorized a waiver, where such waiver was in effect on January 2, 1979, and continues in effect. Where a deposit of estimated duties had been made because of the expiration of the waiver authority, refunds of the appropriate amounts will be made.

LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: April 18, 1979.

ROBERT H. MUNDHEIM,
The General Counsel of the Treasury.

[Published in the Federal Register, Apr. 30, 1979 (44 F.R. 25282)]

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through January 3, 1979, are available in microfiche format at a cost of $5.10 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: April 23, 1979.

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

Date of decision	File No.	Issue
4–10–79	103737	Carrier control: use of foreign-built, oceanographic research vessel in U.S. territorial waters
3– 1–79	103742	Instruments of international traffic: Whether steel spacers and brace assemblies used in the container transportation of axle assemblies qualify as instruments of international traffic
2–28–79	103763	Vessels: Whether a cruising license is required for yachts or pleasure boats
3–27–79	103776	Instruments of international traffic: Steel tanks used to transport latex
2–27–79	103801	Vessel repair: Whether negligence of customhouse broker justifies acceptance of untimely petitions for relief from payment of vessel repair duties
2–27–79	103811	Carrier control: Whether the operation of a foreign-built vessel in oil spill cleanups is prohibited by any law administered by the Customs Service
3–30–79	103854	Instruments of international traffic: Steel cylinders used to carry uranium
3–30–79	103860	Aircraft: Procedure for reporting certain aircraft proceeding under a permit to proceed to an airport in the United States
3–22–79	103871	Vessels: Applicability of Customs and navigation laws to operation of ferryboat service between the United States and Canada
1–15–79	209511	Drawback: Whether domestic construction and outfitting steel should be included in the scrap computation. in liquidating drawback entries under 19 U.S.C. 1313(g), covering structural steel used in building a barge
3–21–79	306878	Entry: Substitution of entries
2–28–79	306912	Generalized System of Preferences: Requirements for duty-free entry
3–15–79	709824	Prohibited and restricted importations: Sodium cyclamates
3– 3–79	046526	Classification: Wall covering fabrics (256.05, 359.30, 359.40, 359.50)
2–13–79	053257	Classification: Polycrystalline gallium phosphide granules (423.00, 632.84)
3– 3–79	053287	Classification: Wall coverings (256.05, 355.18, 355.25, 359.30, 359.50)
2–13–79	053973	Classification: Woman's blouse (382.00, 382.33)
2– 6–79	054046	Classification: Reed grass broom (222.64)
2– 6–79	055202	Classification: Lengths of catgut (190.25, 734.88, 792.22, 735.20)
2–28–79	055209	Classification: Unstuffed animal heads used to make novelty pillows (367.55, 737.40)
1–30–79	055290	Classification: Nylon tents (389.60, 735.20)

Date of decision	File No.	Issue
2-26-79	055344	Classification: Denim jeans (380.00)
3- 7-79	055368	Classification: Motor vehicle lighting equipment (653.39, 683.65).
3-13-79	055371	Classification: Baseball batting gloves (704.85, 705.48, 705.67, 734.56, 735.05)
2-28-79	055450	Classification: Plastic transfer cards (273.75, 774.60)
3- 1-79	055452	Classification: Sandal; ASP (700.60)
3-15-79	055480	Classification: Raincoats (382.00, 382.12)
3- 8-79	055482	Classification: Tubes and fittings (771.55, 772.65, 774.60)
3-15-79	055485	Classification: Drapery tiebacks; like furnishings (365.78, 365.86, 386.04, 386.08)
3-14-79	055660	Generalized System of Preferences: Substantial transformation of constituent materials used in the manufacture of GSP-eligible refractory kiln furniture
2- 8-79	057157	Classification: Hay movers (692.60, 666.00)
2-28-79	057184	Classification: Palm leaf straw shopping bags (222.42, 706.12)
12-26-79	057200	Classification: Cow teat sanitizer (662.45)
3- 9-79	057307	Classification: Polyethylene sheets (355.82, 774.60)
2- 6-79	057352	Classification: Toy construction set (737.09, 737.55, 737.95)
2- 6-79	057375	Classification: Hasp device for cabinets (647.03)
3- 8-79	057377	Classification: Plastic reed baskets (706.60, 772.15)
11-21-78	057389	Classification: Yarn beams (657.40, 670.74)
3-12-79	057439	Classification: Fireplace bases (653.94)
12-26-78	057451	Classification: Sandal (700.60)
2-27-79	057468	Classification: Bicycle parking rack (727.55)
3-13-79	057485	Classification: Polyethylene fabric (355.82, 666.00, 774.60)
2-13-79	057494	Classification: Shaved wood rose (748.21)
3- 2-79	057506	Classification: Fry tank (653.51, 653.94, 684.50)
3- 2-79	057533	Classification: Propane-fired construction heater (661.70, 678.50)
1-14-79	057552	Classification: Hot water pressure relief valve; water pressure reducer; manometer (680.27, 711.84)
3- 9-79	057560	Classification: PVC-impregnated glove (705.85)
3- 1-79	059562	Classification: Sweaters (382.02, 382.04, 382.06, 382.58, 382.78)
3- 9-79	057564	Classification: Wire display hook (653.94, 657.25)
2- 5-79	057567	Classification: Marble floor tiles with polyester resin binding (728.25, 771.55)
2-27-79	057591	Classification: Shear knives (649.43, 649.46, 649.67)
2-16-79	057707	Classification: Football shoe (700.60)
3- 9-79	057814	Classification: Gloves (704.85)
3-12-79	057922	Classification: Kayak skin (696.40)
3-13-79	057974	Classification: Men's casual mesh shoe (700.60)
3- 8-79	057977	Classification: Men's desert boot (700.58)

Date of decision	File No.	Issue
3–23–79	058503	Classification: Antibiotic test kit; baby bottle warmer (684.50, 711.88)
3–20–79	058617	Classification: Opacity and color requirements for stoneware, subporcelain, and porcelain.
3–14–79	058623	Classification: Ceramic substrates; integrated circuit packages (535.14, 685.90)
3– 1–79	058700	Classification: Ceramic plaque (534.87, 534.94)
3–12–79	058744	Classification: parts of time switches (657.40, 680.45, 682.20, 685.90, 715.60 through 715.68, 720.02, 720.36, 774.60)
3– 6–79	058803	Classification: Automobile cylinder plug with keys (646.92, 685.90)
3– 1–79	058832	Classification: Tube hollows (806.30)
3– 9–79	058837	Classification: Ceramic board (522.81)
3–30–79	058849	Classification: Pencil holder; mirror frame; clock case; glass mirror (544.51, 544.54, 720.34, 774.60)
3– 2–79	058863	Classification: Watch cases (807.00)
3– 7–79	058865	Classification: Freight car components assembled abroad (807.00)
3–16–79	058868	Classification: Steel wire rods (806.30)
3– 8–79	058876	Classification: Gas-insulated substations (685.90)
2–27–79	058882	Classification: Sweaters (801.10)
3– 7–79	058913	Classification: Samples (860.30)
3–23–79	058955	Classification: Automobile stereos
3– 6–79	059137	Classification: Wall covering material (256.05, 335.75, 222.64, 335.95, 386.50, 387.30, 389.60)
3– 6–79	059241	Classification: Wall coverings (256.05, 357.80)
2–26–79	059698	Classification: Roof coating product of asphalt and fiberglass (799.00)
3–15–79	059746	Classification: Bound printed matter (274.75, 274.85, 668.38)
3–13–79	059767	Classification: Polypeptides (403.90, 425.52, 432.00)
2–13–79	059796	Classification: Eyelet embroidery
3– 3–79	059815	Classification: Crabmeat (114.15, 114.20)
3–15–79	059901	Classification: Jackets (380.02, 380.63, 380.66)
2–14–79	059906	Classification: Fabric-backed vinyl material (355.65)
3– 3–79	059908	Classification: Wall coverings (256.05, 359.20, 387.30)
4–10–79	059939	Classification: Wall coverings (338.10, 338.30, 355.65, 338.15, 356.25, 356.45, 357.10, 357.15, 359.50)
4– 2–79	059955	Classification: Knit women's garments (382.02, 382.54, 382.58)
3– 1–79	059981	Classification: Acoustical material (245.90, 355.25, 389.62)
2–28–79	060005	Classification: Flexible polyester resin (405.25)
3–13–79	060007	Classification: Benzenoid chemical used as a photographic developer (405.20)
4–10–79	060039	Classification: Printing ink compound (176.26, 430.00, 432.00, 799.00)

Date of Decision	File No.	Issue
1–25–79	060044	Classification: Polyvinyl chloride resin (445.45)
2–26–79	060054	Classification: Sweater with ornamental label (380.02)
3–15–79	060223	Classification: Lithographical, printed pictorial matter (274.60)
3– 1–79	060252	Classification: Cold pack (774.60, 799.00)
3–15–79	060267	Classification: Alachlor (405.15)
4– 2–79	060328	Classification: Elastic package ties (349.10, 389.62)
3– 8–79	061006	Classification: Garments with embroidered trademark emblems on exterior; ornamentation
3–15–79	061066	Classification: Wooden table tops with aluminum legs (206.98, 207.00, 653.51, 654.10)

Decisions of the United States Customs Court

Customs Decisions

(C.D. 4796)

ADMIRAL CRAFT EQUIPMENT CORP. *v.* UNITED STATES

Wearing Apparel

WEARING APPAREL—DISPOSABLE PLASTIC APRONS AND BIBS

Disposable plastic aprons and bibs were properly classified as wearing apparel composed of plastic. The protective purposes of the importations are consistent with the purposes of wearing apparel, and their disposable nature is irrelevant to their tariff

classification. *Antonio Pompeo* v. *United States*, 40 Cust. Ct. 362, C.D. 2006 (1958) distinguished. *W. J. Byrnes & Co. of N.Y., Inc., et al.* v. *United States*, 38 Cust. Ct. 339, C.D. 1884 (1957) distinguished.

Court No. 77-12-04909

Port of New York

[Plaintiff's motion for summary judgment denied; defendant's cross-motion for summary judgment granted.]

(Dated April 12, 1979)

Shaw and Stedina (*Charles P. Deem* of counsel) for the plaintiff.
Barbara Allen Babcock, Assistant Attorney General (*Glenn E. Harris*, trial attorney), for the defendant.

Opinion and Order

Watson, Judge: This matter is before the court on cross-motions for summary judgment, and properly so, due to the absence of any issues of material fact.

The merchandise in dispute consists of plastic disposable aprons and bibs imported from Korea. The aprons are of the type which cover most of the wearer's front and are donned by inserting the head through a hole in the upper part and tying a central band around the waist. The bibs are invoiced as lobster bibs. They are designed to be tied around the neck and are emblazoned with the picture of a red lobster "dormant."

This merchandise was classified as plastic wearing apparel under item 772.30 of the Tariff Schedules of the United States[1] (TSUS) and assessed with duty at the rate of 12.5 per centum ad valorem. Plaintiff claims that the merchandise is properly classifiable as other plastic articles not specially provided for under item 774.60, TSUS[2] and is consequently free of duty.

Plaintiff, having the burden of first overcoming the presumption that these articles are wearing apparel, argues that the term "wearing apparel" does not cover articles worn by humans essentially for protective purposes. As a general proposition this is obviously incorrect.

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[1] Item 772.30 reads as follows:
Wearing apparel (including rainwear) not specially provided for, of rubber or plastics.

[2] Item 774.60 and its related heading read as follows:
Articles not specially provided for, of rubber or plastics:

* * * * * * *

Other

An important, if not primary, purpose of wearing apparel is protection against the environment. No justification exists for distinguishing between articles worn for protection against the elements and those worn for protection against more localized conditions prevailing in the environment of the home, workplace, school, or restaurant. It is clear that textile articles similar to these importations have long been viewed as wearing apparel. *Henry E. Frankenburg et al.* v. *United States*, T.D. 12961—G.A. 1512 (1892); *Lamb & Griesbach* v. *United States*, T.D. 12110—G.A. 972 (1891); *G. & J. Ballin* v. *United States*, T.D. 11085—G.A. 528 (1891). See also, *Campbell, Metzger & Jacobson* v. *United States*, T.D. 34243—G.A. 7537 (1914). *Cf. Darlington, Runk & Co.* v. *United States*, 136 F. 716 (T.D. 26197)(C.C.E.D. Pa. 1905); *In re Spielman et al.*, 66 F. 724 (C.C.S.D.N.Y. 1894).

Contrary to plaintiff's assertion, its claim is not supported by the reasoning in *Antonio Pompeo* v. *United States*, 40 Cust. Ct. 362, C.D. 2006 (1958). In that case crash helmets used by motorcycle and auto racers were held not to be wearing apparel. However, the protective function of the helmets went far beyond that of general wearing apparel. The helmets were designed to protect the wearer against traumatic injury arising from unusual hazards. In fact, the court compared them to welders' face masks, divers' helmets and dress, policemen's bulletproof vests, and lead aprons worn by X-ray technicians. The importations involved herein clearly do not belong to the same category and therefore would not benefit from any interpretation of wearing apparel which excluded articles of a highly developed and specialized protective nature. For this reason also, the court does not find it necessary to enter into a discussion of defendant's criticism of the result in the *Pompeo* case.

As for the disposable character of the importations, there is no basis in the statute for distinctions derived from the relative durability of plastic wearing apparel.

The court has found one decision which requires further discussion. In *W. J. Byrnes & Co. of N.Y., Inc., The Museum of Modern Art* v. *United States*, 38 Cust. Ct. 339, C.D. 1884 (1957), paper slippers were held to be properly classifiable as manufactures of paper [3] rather than as footwear.[4] The paper slippers were imported to be worn by visitors to a Japanese house erected on the premises of the Museum of Modern Art in New York City. Two reasons for this holding were given by the court: First, that the provision for footwear was intended to

[3] The relevant provision was par. 1413 of the Tariff Act of 1930, as modified by the Annecy Protocol of Terms of Accession to the General Agreement on Tariffs and Trade, T.D. 52373, supplemented by Presidential proclamation, T.D. 52462.

[4] Par. 1530(e) of the Tariff Act of 1930.

include only coverings designed to protect the foot and to be worn for an indefinite period of time; and second, that the upper parts of the imported slippers were not composed of material specifically named in the footwear provision or substitutes therefor.

To the extent that the opinion in *W. J. Byrnes & Co.* considered the durability of an article as relevant to its classification it gave unwarranted importance to that characteristic. However, a number of special considerations were involved in that case which distinguish it from this one. The slippers were used to protect the floors of the Japanese house and not the wearers. More importantly, the material of which the slippers were composed was not named in the statute. Here, we have a special provision for wearing apparel composed of plastic. To exclude the imported aprons and bibs would therefore require the drawing of an even finer and more artificial distinction than was drawn in the *Byrnes* case. It would require the thankless task of determining the relative durability and disposability of articles made of the same basic material and belonging to the same general class—all this without any legislative indication that the distinction is germane.

A provision for wearing apparel is a classification by use. *Cf. United States* v. *Hillier's Son Co.*, 14 Ct. Cust. Appls. 216, T.D. 41706 (1926). Accordingly the test of whether an article falls within the classification is whether it belongs to the class of articles used as wearing apparel. See *Bangor & Aroostook Railroad Co. et al.* v. *United States*, 20 CCPA 96, T.D. 45724 (1932).

The duration of an article's use is irrelevant to a determination of this nature. If the importation belongs to the class of articles used as wearing apparel it is classifiable as such.

In light of the above conclusions, it is not necessary to reach defendant's additional argument that these articles are within the trade meaning of wearing apparel. The common meaning of the term adequately disposes of the matter. See generally, *Maillard et al.* v. *Lawrence*, 57 U.S. (16 How.) 251 (1853).

It is therefore ORDERED that plaintiff's motion for summary judgment be denied and defendant's cross-motion for summary judgment be granted.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *April 16, 1979.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P79/61	Ford, J. April 13, 1979	Norman G. Jensen, Inc.	76-3-00550	Item 692.35 5.5%	Item 692.30 Free of duty	U.S. v. Norman G. Jensen, Inc. (C.A.D. 1183)	Noyes (Pembina) Skidder tractors
P79/62	Boe, J. April 13, 1979	John S. Connor, Inc., for the account of Clairol, Inc.	75-2-00407	Item 544.51/807.00 20.5% upon full value of merchandise less cost or value of prefabri-	Items 688.40/ 807.00 6.5% upon full value of imported merchandise, less	Englishtown Corporation v. U.S. (C.A.D. 1187)	Baltimore Electrical makeup appliances incorporating mirrors, lights and other features (models [C]LM2 and LM1)

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
				cated U.S, manufactured components Item 544.51 20.5% upon full value of merchandise	cost or value of prefabricated U.S. manufactured components contained in model [C]LM2 which were found applicable upon liquidation of the merchandise; upon full value of imported merchandise less cost or value ($1.45224 each) of prefabricated U.S. manufactured components contained in model LM1 imported in 1971		

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R79/52	Ford, J. April 13, 1979	Curtis Mathes Mfg. Co.	R63/5332, etc.	United States value	F.o.b. unit invoice prices plus 50%	Agreed statement of facts	Los Angeles Electron receiving tubes
R79/53	Ford, J. April 13, 1979	National Silver Co.	R60/19943, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Flatware
R79/54	Landis, J. April 13, 1979	Bentley Fabrics Corp.	76-10-02300	Export value	120 BF per meter	Agreed statement of facts	New York Cotton/rayon fabric, Las Vegas quality, color: 683
R79/55	Landis, J. April 13, 1979	Fermin R. Morales, a/c Curtis Mathes of Puerto Rico	R68/3071	United States value	F.o.b. unit invoice prices plus 50%	Agreed statement of facts	San Juan Electron receiving tubes

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R79/56	Landis, J. April 13, 1979	Morse Sewing Machine	R61/18817, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Sewing machine heads
R79/57	Landis, J. April 13, 1979	A. H. Myer & Co. et al.	R65/15869, etc.	Constructed value	As set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	San Francisco; Los Angeles Phonograph records
R79/58	Landis, J. April 13, 1979	Transworld Shipping	R66/1175, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	New York Sewing machines

Rehearing Motion Filed

APRIL 9, 1979

Hawaiian Motor Company *v.* United States, Court No. 75–12–03069.—MECHANICAL EQUIPMENT.—C.D. 4790. Motion by plaintiff.

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